

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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S.C. Supreme Court

GREGORY GOSNELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001068

APPENDIX

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	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2011GS2308334,
	)	2011GS2308335
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Gregory Earl Gosnell,	)	
	)	
Defendant.	)	ORIGINAL

September 10, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE LARRY B. HYMAN, JR., Judge.

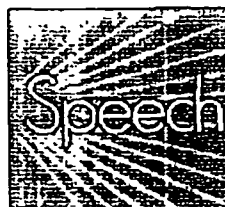
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(WHEREUPON, the proceedings begin on the 10th day of September, 2012 at approximately 11:24 a.m.)

(WHEREUPON, State's Exhibits 1 through 3 are marked for identification purposes.)

THE COURT: All right. Ms. Seay, Ms. Mitchell, Mr. Johnson, are we ready to proceed?

MR. JOHNSON: I believe so, Your Honor.

MS. SEAY: Yes, sir, Your Honor.

THE COURT: All right. We have the defendant in the courtroom, the court reporter and the clerk. All right.

MR. JOHNSON: Your Honor, if I may?

THE COURT: Yes, sir.

MR. JOHNSON: Before we get started, I -- my client has expressed a wish to address Your Honor before we get started.

THE COURT: Very well.

MR. GOSNELL: Your Honor, I have documents here. I have all my evidence. I asked Mr. Brian Johnson for them and still can't get it before I make any decision on this. Brady law versus Maryland. And I have a right to all my evidence.

THE COURT: All right. What do you believe that the State has? You speaking of Brady versus

1 Maryland. That would be anything that is
2 exculpatory, you are entitled to that. Now, what
3 do you suggest to me that is in possession of the
4 State that has not been turned over?

5 MR. GOSNELL: The toxicology, I have not
6 received it.

7 THE COURT: The what now?

8 MR. GOSNELL: The toxicology test.

9 THE COURT: Toxicology?

10 MR. GOSNELL: Yeah, and all the DNA.

11 THE COURT: All right. Ms. Seay, ---

12 MS. SEAY: Yes, sir.

13 THE COURT: --- was there any toxicology
14 evidence or any DNA evidence in this case?

15 MS. SEAY: Yes, sir. The toxicology report
16 was part of the medical examiner's report, which
17 has been provided to the defense and the DNA report
18 was also provided to the defense.

19 THE COURT: All right. Mr., uh, -- Mr.
20 Gosnell, Mr. Gregory Earl Gosnell, the Solicitor
21 tells me that there was toxicology evidence and
22 there was DNA evidence and that has been turned
23 over to your attorneys.

24 MR. GOSNELL: I have asked my attorney for
25 all my evidence. He refuse to give it to me.

1 **THE COURT:** Tell me about that, Mr. Johnson.
2 What do you know about that?

3 **MR. JOHNSON:** Your Honor, this is a
4 situation I actually -- when we got the initial
5 packet, he was given a whole copy. The copy has
6 been -- was stolen from him at the jail. I have
7 visited him several times in the last few weeks and
8 made sure that he was able to see everything, able
9 to review everything in preparation for trial. But
10 I did not give him a second copy since the first
11 copy was stolen.

12 **THE COURT:** All right. But you had given it
13 to him in the past and made it available to him
14 during your conversations with him?

15 **MR. JOHNSON:** Yes, sir, Your Honor.
16 Anything -- this is my trial book, which is
17 everything that had been provided by the State.
18 I've been through him with this and asked him if he
19 wanted to go over anything or anything of that
20 nature. This is not something -- this is not
21 something that's he's addressed in these meetings,
22 although he has expressed this just previously. I
23 also have a signed letter from him when he received
24 his discovery packet, which is actually --

25 **THE COURT:** All right. Mr. Gosnell, first

1 of all, this evidence has undeniably been made
2 available to your defense team. They have had this
3 evidence. They tell me that they have made copies
4 and it was provided to you and it's available to
5 you now.

6 MR. GOSNELL: I have a letter here. I had
7 it notarized where I have asked for all my motion
8 and still not got it.

9 THE COURT: Well, they tell me that they'd
10 given it to you and he has it right there
11 available.

12 MR. GOSNELL: He will not let me have all
13 the DNA. He tells me I do not need it.

14 THE COURT: Mr. Johnson, would you make
15 copies of it before we pull this jury and make sure
16 that he has his own copy, okay?

17 MR. JOHNSON: Yes, sir, Your Honor. I will
18 make a duplicate.

19 THE COURT: Make sure he has his own copy.

20 MR. JOHNSON: Yes, sir.

21 THE COURT: Mr. Gosnell, what else do you
22 need?

23 MR. JOHNSON: I would like to fire Mr.
24 Johnson. I put in my motion to fire him. I wrote
25 Judge Miller about it. Judge Miller wrote me a

1 letter back and said that he could not hear my
2 motion to fire him. Well, on March the 9th of
3 2012, Mr. Johnson takes me in front of Mr. Edward
4 Miller and he denies my motion. I have the letter
5 here, sir.

6 **THE COURT:** Well, if your motion's been
7 denied, then it's already been heard. Did Judge
8 Miller hear your motion to relieve counsel?

9 **MR. GOSNELL:** Judge Miller heard it but he
10 wrote me a letter and said he wouldn't do it, he
11 wasn't the chief administrative judge, that Verdin
12 was.

13 **THE COURT:** Well, did he have a hearing on
14 the issue of whether or not he was going to relieve
15 your counsel?

16 **MR. GOSNELL:** Not really.

17 **THE COURT:** Well, what does that mean, Mr.
18 Gosnell, not really?

19 **MR. GOSNELL:** He -- when he had the hearing,
20 he ran in from the chair out in front of the camera
21 like I didn't know who the judge was.

22 **THE COURT:** Mr. Johnson, let me hear from
23 you.

24 **MR. JOHNSON:** Yes, sir, Your Honor. This
25 was a -- Mr. Gosnell appeared from the LEC on video

1 camera. That's how we do bonds and other motions
2 in Greenville. The judge was on the bench and I
3 was present. He was on TV but he got to speak. I
4 got to speak. The judge said that he would not
5 relieve me as his counsel.

6 **THE COURT:** Well, Mr. Gosnell, your attorney
7 tells me that the motion was heard. It was heard
8 via some sort of video link and that the judge
9 heard you and the judge denied your motion. Now,
10 is that what happened, Mr. Gosnell?

11 **MR. GOSNELL:** That's what happened but I
12 would like to submit this letter to the Court. He
13 wrote me back a letter saying that he could not
14 hear my motion.

15 **THE COURT:** Well, let me see what you got.
16 (WHEREUPON, the letter is passed up to the Court.)

17 **THE COURT:** All right. When was your motion
18 heard?

19 **MR. GOSNELL:** My motion was heard on March
20 the 9th.

21 **THE COURT:** Which was almost a month after
22 this letter.

23 **MR. GOSNELL:** Yes, sir. I think.

24 **THE COURT:** So he did hear your motion?

25 **MR. GOSNELL:** Yeah, but he wrote me a letter

1 and told me he could not help me with it.

2 **THE COURT:** Apparently, the Chief
3 Administrator Judge assigned it to him because he
4 did hear it. Did you -- you want that made a part
5 of this record, Mr. Gosnell?

6 **MR. GOSNELL:** Yeah, I want that a part of my
7 record.

8 **THE COURT:** All right. Make this a part of
9 the record then.

10 (WHEREUPON, Defendant's Exhibit 1 is marked for
11 identification purposes.)

12 **THE COURT:** All right. What else do you
13 have, Mr. Gosnell?

14 **MR. GOSNELL:** I'd like a chance to go over
15 this DNA and the rest of my evidence here before I
16 begin trial. I'm just getting it today.

17 **THE COURT:** Well, Mr. Gosnell, this case is
18 scheduled for trial. This evidence has been made
19 available to your attorneys. They tell me that you
20 have had it as well and it has been available to
21 you.

22 **MR. GOSNELL:** I have not had this, sir.

23 **THE COURT:** I will not continue this case.
24 Anything else, Mr. Gosnell?

25 **MR. GOSNELL:** Yes, sir. I'd like to ask for

1 a mistrial. I'd like -- cause I'm not satisfied
2 with my attorney. I have motions that I filed and
3 filed. He will not file. I have motions where I
4 have filed the courts. He's -- he ain't do nothing
5 for me, sir.

6 **THE COURT:** Well, your motion to relieve
7 your attorney has been denied -- heard and denied
8 by Judge Miller. No question about that. If you
9 have other motions that you have filed, then let's
10 hear them.

11 **MR. GOSNELL:** I have -- I can not file my
12 motions cause I have him.

13 **THE COURT:** You can't what?

14 **MR. GOSNELL:** I can't -- the court wrote me
15 back I can not file a motion cause I have an
16 attorney.

17 **THE COURT:** Well, you told me you have filed
18 motions. Now, have you filed --

19 **MR. GOSNELL:** I tried to get him to file
20 motions. He will not file motions.

21 **THE COURT:** What motions are you trying to
22 get him to file?

23 **MR. GOSNELL:** About all my evidence. I have
24 letters here and had them notarized.

25 **THE COURT:** Letters as to what, Mr. Gosnell?

1 **MR. GOSNELL:** Where he had filed motions and
2 he wouldn't do it.

3 **THE COURT:** What motions, Mr. Gosnell?

4 **MR. GOSNELL:** My evidence. A motion of
5 notice to the administrative of all evidence.

6 **THE COURT:** Say that again?

7 **MR. GOSNELL:** You have to look at these
8 motions, Your Honor.

9 **THE COURT:** Well, what I'm asking you is
10 what motions have you asked your attorney to file
11 that you say he has not filed?

12 **MR. GOSNELL:** I asked for all my preliminary
13 hearing transcripts. He will not -- I asked for
14 them. He wouldn't do it. I asked him to file
15 these motions right here. He would not file the
16 motions ---

17 **THE COURT:** Which motions --

18 **MR. GOSNELL:** --- about all my evidence.

19 **THE COURT:** Which motions are those?

20 **MR. GOSNELL:** The evidence, Brady discovery
21 motion and a motion of, uh, notice to the
22 administrative of evidence and demand for a change
23 of custody of --

24 **THE COURT:** All right. Mr. Johnson, maybe
25 you can help me with that.

1 **MR. JOHNSON:** Uh, Your Honor, we actually
2 have filed Brady. He talking about Brady. We
3 filed Brady.

4 **THE COURT:** It appears that you have filed a
5 Brady motion.

6 **MR. JOHNSON:** We also filed a Rule 6. I
7 think he's referring to Rule 6. We also filed Rule
8 6, not consenting to chain of custody.

9 **THE COURT:** All right. I understand that.

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** He says he's filed those.

12 **MR. GOSNELL:** He's not filed no motions for
13 me. I have letters back here from the court where
14 he has not filed no motions. I can't file no
15 motions cause I have him as an attorney.

16 **THE COURT:** Let me say this. Is there any
17 question, Ms. Seay, that counsel has asked for
18 proof of chain of custody?

19 **MS. SEAY:** No question. He has asked for
20 that.

21 **THE COURT:** There you go, Mr. Gosnell. He
22 has. The State acknowledges that he has.

23 Has he filed a Brady motion?

24 **MS. SEAY:** Yes, sir.

25 **THE COURT:** A Rule 5 motion for evidence?

1 MS. SEAY: Yes, sir.

2 THE COURT: Mr. Gosnell, the State
3 acknowledges that that was done.

4 MR. GOSNELL: Can I submit all my paperwork
5 in the court when I show to the jury?

6 THE COURT: When you show what to the jury?

7 MR. GOSNELL: My paperwork where I tried to
8 get him to file motions that he wouldn't file for
9 me.

10 THE COURT: You want to make that evidence
11 that you want to give to the jury?

12 MR. GOSNELL: Yes, sir.

13 THE COURT: No, sir. That's not
14 appropriate.

15 MR. GOSNELL: Okay.

16 THE COURT: All right. What else, Mr.
17 Gosnell?

18 MR. GOSNELL: That will do it.

19 THE COURT: All right. Mr. Johnson, do we
20 have any pretrial motions on behalf of the defense?
21 I know we have a Jackson v. Deno hearing that the
22 State is going to go forward with.

23 MR. JOHNSON: Yes, sir, Your Honor. The
24 first thing is with regard to there is one photo.
25 It's a photo of my client after he had, uh, turned

1 himself in to the police. That photo shows him
2 with various tattoos. That's pretty much what it
3 shows. I'm aware that that may be 403 violation as
4 far as --

5 **THE COURT:** Well, let me see your photo.
6 You think it might be prejudicial in some form?

7 **MR. JOHNSON:** Unduly prejudicial, Your
8 Honor. Yes, sir.

9 **THE COURT:** All right. What's the relevance
10 of a photo showing his tattoos? Is there an
11 identification issue, uh, Ms. Seay?

12 **MS. SEAY:** Your Honor, the relevance of this
13 photograph is to show that the defendant has no
14 injuries to his upper body. He claims that he was
15 in a violent fight and struggle with the victim.
16 These photographs were taken when the defendant
17 turned himself in several days later.

18 **THE COURT:** Can I see the photograph?

19 **MS. SEAY:** That would be the reason we are
20 offering it, Your Honor.

21 **THE COURT:** All right. Mr. Johnson, what
22 about that? She tells me that this is the best
23 evidence. There's no other way to show it any
24 better that this defendant was not involved or did
25 not receive any upper body injuries as a result of

1 the altercation that he had with the victim. I
2 only see a couple of tattoos. I have some question
3 as to whether that would prejudice him in the eyes
4 of the jury. Tell me your position.

5 **MR. JOHNSON:** Your Honor, my concern is that
6 the tattoos themselves may depict him as someone
7 who is a rebel or something of that nature. I
8 think that would be the undue prejudice that would
9 serve to this case. As far as, uh, -- I don't --

10 **THE COURT:** Was it part of your defense that
11 he was involved in some sort of altercation with
12 the victim?

13 **MR. JOHNSON:** Yes, sir, Your Honor.

14 **THE COURT:** And that he received some sort
15 of injury or --

16 **MR. JOHNSON:** We are not going to assert
17 that he received any injuries to that part of his
18 body. I believe my client will say that he was hit
19 in the head but he will not say that he was hit in
20 the chest area.

21 **THE COURT:** If he's going to acknowledge
22 that he received no injuries to his upper torso.

23 **MS. SEAY:** He acknowledges that, then we
24 would be willing not to submit the photo.

25 **THE COURT:** There you go, Mr. Johnson. How

1 about that?

2 **MR. JOHNSON:** That's acceptable, Your Honor.

3 **THE COURT:** But please be on notice that if
4 the evidence is otherwise, that he was involved in
5 a violent altercation, that there was fighting
6 going on and there's any, any, uh, assertion
7 directly or indirectly made by the defendant that
8 he perhaps sustained injuries to his upper body,
9 then I would let her put that in. Okay.

10 **MR. JOHNSON:** Yes, sir, Your Honor. The
11 second thing I have is I received in a recent
12 discovery package several love letters that look to
13 be written from my client to one of the witnesses,
14 Pamela Daniel. My client -- it's my understanding
15 that first of all the handwriting on that is
16 different. He would claim -- he would tell the
17 court that he did not write them, that he did not
18 read and write that well and he did not write those
19 letters. I'm aware that they can be used against
20 them.

21 **THE COURT:** What's the nature of the
22 letters?

23 **MR. JOHNSON:** One of the -- the primary --
24 if the Solicitor were to use them, they ask
25 essentially for her to testify for him.

1 **THE COURT:** They ask the question to testify
2 favorably for him.

3 **MR. JOHNSON:** It doesn't say favorably, but
4 that's the -- that would be the connotation that we
5 would take from them.

6 **THE COURT:** That would be the assumption?

7 **MR. JOHNSON:** Yes, sir, Your Honor.

8 **THE COURT:** Ms. Seay?

9 **MS. SEAY:** Your Honor, I don't intend to
10 introduce those letters.

11 **THE COURT:** She doesn't intend to even offer
12 them.

13 **MR. JOHNSON:** Yes, sir, Your Honor.

14 **THE COURT:** Okay.

15 **MR. JOHNSON:** Uh, the last thing. Uh,
16 several of the witnesses mentioned a previous
17 altercation between my client and the victim. I'd
18 like to make sure that that's not brought up and
19 it's known to those witnesses not to bring it up or
20 else I will have to ask for a mistrial at that
21 point.

22 **THE COURT:** You anticipate that the state
23 intends to offer or that the witnesses have
24 knowledge of prior altercations of some sort ---

25 **MR. JOHNSON:** Yes, sir.

1 **THE COURT:** --- between your client and the
2 victim.

3 **MR. JOHNSON:** And the victim.

4 **THE COURT:** And that you don't want that
5 brought up or mentioned in the courtroom, is that
6 correct?

7 **MR. JOHNSON:** No, sir, Your Honor.

8 **THE COURT:** Well, let's see what Ms. Seay
9 has to say about that. Let me ask you first, what
10 is your ground for suppression of that sort of
11 testimony? I mean, wouldn't prior bad blood
12 between the parties over the victim and the
13 defendant be relevant? Wouldn't that be relevant?
14 If she can get it in. I don't know if she can get
15 it in under the rules. What's your objection?

16 **MR. JOHNSON:** I would say a common sense
17 analysis obviously. As far as legally speaking, I
18 don't believe that it's allowed. I don't believe
19 that it's proper evidence of prior bad evidence or
20 anything of that nature. I think that would be
21 required to be one continuous situation. But
22 altercations in the past happened --

23 **THE COURT:** Well, I think for it to be
24 relevant, we'd have to look at things as to what's
25 the nature of the altercation, how distant or

1 remote the altercation was or things of that
2 nature. Once it becomes relevant, all relevant
3 evidence is admissible unless it was excluded by
4 some rule. It could be 403 ---

5 **MR. JOHNSON:** Yes, sir, Your Honor.

6 **THE COURT:** --- which would be whether or
7 not it would go to confuse the jury or it would be
8 prejudicial and that means that its probative value
9 is substantially outweighed as to prejudice of the
10 defendant. There could be something like that.

11 **MR. JOHNSON:** Yes, sir, Your Honor.

12 **THE COURT:** I'm not sure what we're talking
13 about. I don't know what the circumstances are.
14 It would be very difficult for me to rule at this
15 juncture on that without doing more.

16 Ms. Seay, you tell me about it.

17 **MS. SEAY:** Your Honor, it sort of goes to
18 the crux of the matter. There was some bad blood
19 between the defendant and the victim over a woman
20 who was initially the girlfriend of the defendant
21 who then went to live with the victim.

22 **THE COURT:** Okay.

23 **MS. SEAY:** Some of the witnesses would
24 testify that, uh, the defendant was very jealous
25 about this and that the evening that he went over

1 to the victim's home, it was because he was upset
2 that this woman was now living with the victim. So
3 these prior difficulties between the two also
4 revolved around the jealousy about the woman. So I
5 think that it's --

6 **THE COURT:** It's motive?

7 **MS. SEAY:** It's all part of the res gestae
8 of the case.

9 **THE COURT:** All right. Mr. Johnson, I'm not
10 going to exclude it at this juncture. When we get
11 into the case, maybe I will. But certainly, I'm
12 not going to do it at this point, but nothing more.

13 **MR. JOHNSON:** Your Honor, may I ask for a
14 proffer of the intended testimony before --

15 **THE COURT:** Certainly.

16 **MR. JOHNSON:** Thank you, Your Honor.
17 Finally, I think there's one witness who refers to
18 -- there is a witness, again, Pamela Daniels. It
19 is mentioned by another witness that my client used
20 to beat her and take her crack. I think that
21 certainly is irrelevant in regards to this
22 situation. It could be used to, uh, -- for the
23 jury to assume that he acted violently in this
24 instance as well. I think that under 403, the 403
25 basis, it should be excluded.

1 **THE COURT:** All right. Tell me about that.
2 Does that witness have other testimony that would

3 --

4 **MS. SEAY:** Uh, Yes, sir. This would be the
5 woman that we were just discussing.

6 **THE COURT:** Who would testify about being
7 jealous and that sort of thing?

8 **MS. SEAY:** Right.

9 **THE COURT:** What's the relevancy of that
10 that, uh, -- from what I'm hearing, I would assume
11 that the victim in this case is a male, is that
12 right?

13 **MS. SEAY:** That's correct.

14 **THE COURT:** And what would then be the
15 relevance of any altercations that this defendant
16 may have had at some other time -- and I assume
17 it's unconnected --

18 **MS. SEAY:** Correct.

19 **THE COURT:** -- with the witness?

20 **MS. SEAY:** I could instruct this witness not
21 to talk about that. I would --

22 **THE COURT:** Would you agree with me though
23 that with nothing more, that would be excluded
24 under Rule 403 and Rule 401? I just don't see the
25 relevance of it.

1 **MS. SEAY:** I would agree. I can instruct
2 her not to discuss that.

3 **THE COURT:** How about that, Mr. Johnson?
4 That satisfies you, doesn't it?

5 **MR. JOHNSON:** Yes, sir, Your Honor.

6 **THE COURT:** All right, sir.

7 **MR. JOHNSON:** At this point, that is the
8 conclusion of my, uh, --

9 **THE COURT:** All right. Ms. Seay, how about
10 your Jackson v. Deno?

11 **MS. SEAY:** We can proceed with that. Do you
12 want me to -- would you like for me to address my
13 other minor pretrial issues?

14 **THE COURT:** Sure. Any order that you would
15 like to do it.

16 **MS. SEAY:** Okay. We talked a little bit
17 about this earlier. I would object to defense
18 counsel cross-examining the witness, Pamela Daniel,
19 about a sexual assault that happened to her earlier
20 in the day of November 4th, 2010, the day before
21 the victim was killed. This sexual assault report
22 has been provided to the defense, a redacted
23 version. However, we don't believe that it's
24 relevant to this case in any way. It has nothing
25 to do with the victim. It has nothing to do with

1 the defendant. It was another, uh, individual who
2 she named as the perpetrator of that offense. We
3 don't believe it has any relevance to this case
4 whatsoever.

5 **THE COURT:** Let me ask Mr. Johnson about
6 that. Mr. Johnson, it would appear -- and let me
7 make sure I got this right. It would appear that a
8 witness, Pamela Davis, may have been the victim of
9 a sexual assault earlier on the same day. That
10 sexual assault was perpetrated by another named
11 individual, not the victim, not the defendant. Is
12 that correct?

13 **MR. JOHNSON:** Yes, sir, Your Honor.

14 **THE COURT:** All right. Then why would that
15 be relevant to this inquiry?

16 **MR. JOHNSON:** Your Honor, to be brief on
17 that, essentially, uh, it offers the reason for my
18 client going over to the home at that point. Ms.
19 Daniels and my client also would testify that she
20 called him on the evening of the incident and
21 communicated that she was raped. That's all we
22 would go into. I wouldn't say anything about the
23 rape, any details, anything. You are correct.
24 That's irrelevant. But what is relevant is that
25 she communicated to him that she was raped and that

1 he went to go see about it.

2 THE COURT: Ms. Seay, I can see where that
3 may be relevant as to why this defendant may have
4 gone over. I assume you're talking about she was
5 the -- the lady that was living with the victim?

6 MR. JOHNSON: Yeah. They lived in the same,
7 essentially the same house.

8 THE COURT: So she tells him that she's had,
9 uh, -- been the victim of some sort of sexual
10 assault. And she has had a relationship at some
11 time in the past with the defendant, is that
12 correct? And she called him. As a result of that,
13 he went over to see her?

14 MR. JOHNSON: Yes, sir, Your Honor.

15 THE COURT: If it's offered for that, Ms.
16 Seay, what would be your objection?

17 MS. SEAY: My objection to that would be,
18 Your Honor, that there could be an implication and
19 the jury could perceive that perhaps the victim is
20 the one who might have raped --

21 THE COURT: And I'll let you ask her that.
22 I will let you ask her, that was not the victim, is
23 that right, Ms. -- her name is Pamela ---

24 MS. SEAY: Pamela Daniel.

25 THE COURT: --- Daniels, Ms. Daniels, that

1 was not the victim who was -- who perpetrated me.
2 I'll let you ask her that. Clear that up.

3 MS. SEAY: That would be my only concern. If
4 Mr. Johnson thinks it's relevant enough to
5 establish why or relevant to establish why his
6 client went over there, I'll let you ask her if
7 that's, in fact, the case, that it was not -- it
8 didn't have anything to do with the victim. I'll
9 let you ask that. Okay.

10 MR. JOHNSON: Thank you, Your Honor.

11 THE COURT: All right. What else do we
12 have, Ms. Seay?

13 MS. SEAY: Your Honor, if we could, I'd like
14 to go ahead and just establish as far as the few
15 civilian witnesses that we have, what their
16 habitual offenses would be. I can tell you what I
17 think. And Mr. Johnson can let us know if he
18 agrees or disagrees.

19 THE COURT: All right.

20 MS. SEAY: Then, in addition, he has
21 provided a list of potential defense witnesses.
22 And I would request that we be provided with dates
23 of birth for a couple of these people so that we
24 can run their rap sheet and see if they have any
25 prior convictions that could be used for

1 impeachment purposes.

2 THE COURT: All right. Let's find out of
3 Mr. Johnson has that information.

4 MR. JOHNSON: I believe I can get it. I
5 just have to -- I don't have it here today.

6 THE COURT: Okay. You could call them and
7 get it?

8 MR. JOHNSON: Yes, Your Honor.

9 THE COURT: All right. And I want you to
10 get that to her then.

11 MS. SEAY: I want to know which ones I need.
12 Some of them are duplicative with the State's
13 witnesses. So I'll let him know.

14 THE COURT: All right.

15 MS. SEAY: Uh, Okay. As far as impeachable
16 offenses for, uh, witness Vernon Clifton Carroll,
17 the State would submit that the impeachable
18 offenses that he has would be 2003 convictions for
19 Failure to Stop for Police, Receiving Stolen Goods
20 and Theft of Cable Service. Those would be the only
21 offenses that would be impeachable.

22 THE COURT: All right. Let me hear them
23 again.

24 MS. SEAY: Failure to Stop for Police,
25 Receiving Stolen Goods and Theft of Cable Service.

1 **THE COURT:** And all those carry more than a
2 year and are within the last 10 years?

3 **MS. SEAY:** Yes, they were in 2003. The
4 Receiving Stolen Goods and the Theft of Cable
5 Service involved, in my opinion, crimes of
6 dishonesty.

7 **THE COURT:** Crimes of dishonesty?

8 **MS. SEAY:** Yes, sir.

9 **THE COURT:** All right. Let me hear you on
10 that, Mr. Johnson.

11 **MR. JOHNSON:** Your Honor, we agree with the
12 State.

13 **THE COURT:** All right.

14 **MS. SEAY:** Okay. Thank you. And as to
15 witness, Pamela Daniel, she has, uh, a variety of
16 convictions that are all 30 days or less, none of
17 which involve dishonesty. So we would submit that
18 she does not have any offenses that would be able
19 to be used for impeachment purposes.

20 **THE COURT:** All right. What about that, Mr.
21 Johnson?

22 **MR. JOHNSON:** One second please, Your Honor.

23 **THE COURT:** Okay.

24 (WHEREUPON, there is a pause.)

25 **MR. JOHNSON:** Your Honor, I believe that's

1 correct.

2 MS. SEAY: Okay. Thank you. As to witness
3 Crystal Keith, she has a 1999, two counts of armed
4 robbery. So we would, uh, concede that those are
5 impeachable convictions.

6 THE COURT: Mr. Johnson?

7 MR. JOHNSON: Yes, sir, Your Honor. We
8 would agree with the state.

9 THE COURT: All right.

10 MS. SEAY: Thank you. And as to witness
11 Kendell Morrison, we would offer, uh, that she has
12 a 2010 Resisting Arrest, Financial Transaction Card
13 Fraud and a 2011 Child Neglect, which we believe
14 that those would be able to be used for impeachment
15 purposes.

16 THE COURT: And Mr. Johnson?

17 MR. JOHNSON: Your Honor, we agree with the
18 State.

19 THE COURT: You agree with that. All right.

20 MS. SEAY: And, Your Honor, I think that
21 would be it for the State's case. All of our other
22 witnesses are law enforcement-type people. We can
23 address the defendant's convictions and his
24 witnesses' convictions at the time of when he
25 decides to put up a case or not.

1 **THE COURT:** Okay. Well, couldn't we just do
2 his convictions now if you have them?

3 **MS. SEAY:** Sure.

4 **THE COURT:** That way we would know -- or it
5 would help him in making a decision as to whether
6 or not he wants to.

7 **MS. SEAY:** Certainly. Let me get to that.
8 Your Honor, I believe that his impeachable
9 convictions would be for a 2006 Petty Larceny, 2006
10 Possession of Crack Cocaine and a 2009 Giving False
11 Information.

12 **THE COURT:** All right. Those -- you have
13 two there, the False Information and the Petty
14 Larceny that would involve dishonesty. Is that
15 correct?

16 **MS. SEAY:** Yes, sir.

17 **THE COURT:** And the Possession of Crack
18 Cocaine would be the 15 years and a penalty of
19 greater than one year.

20 **MS. SEAY:** Yes, sir.

21 **THE COURT:** And that would be your grounds,
22 right?

23 **MS. SEAY:** Yes.

24 **THE COURT:** All right. Mr. Johnson, do
25 those particular offenses in your view seem to fit

1 the statutory scheme or the rule?

2 MR. JOHNSON: Yes, sir, Your Honor.

3 THE COURT: All right. Then the State would
4 not seek to impeach on any other offenses?

5 MS. SEAY: That's correct.

6 THE COURT: Okay.

7 MR. JOHNSON: Your Honor, -- do you mind
8 saying it one more time?

9 MS. SEAY: 2006 Petty Larceny, 2006
10 Possession of Crack Cocaine and 2009 Giving False
11 Information.

12 MR. JOHNSON: Thank you.

13 MS. SEAY: Your Honor, the victim has, uh, a
14 criminal record as well. I don't know how you want
15 to handle that. I don't know what the defense
16 intends to get into.

17 THE COURT: Let's just put it out there in
18 case. I don't want Mr. Johnson to have to give up
19 any trial strategy he may or may not try to get
20 into, but let's just see what's out there. All
21 right.

22 MS. SEAY: Okay. You want me to go through
23 his record for you?

24 THE COURT: Yes.

25 MS. SEAY: Okay. Uh, Your Honor --

1 **THE COURT:** And what we'll do here is just
2 make sure we all understand or are in agreement as
3 to what his record was for whatever purpose.

4 **MS. SEAY:** It dates back to 1961, uh,
5 Assault and Battery with Intent to Kill, Sodomy;
6 1963, Armed Robbery; 1966, Larceny and Malicious
7 Mischief to Real Property; 1979, Tampering with an
8 Automobile, Molesting Women or Children, Assault
9 Battery; 1980, Driving Under the Influence first
10 offense, Unlawful Use of Telephone; 1981, Unlawful
11 Carrying of a Pistol, Pointing a Firearm; 1983,
12 Burglary, Intimidating a Witness, Violation of
13 Probation; 1988, Assault and Battery of High and
14 Aggravated Nature; 1994, Possession of Marijuana,
15 Possession of Drug Paraphernalia, Breach of Peace,
16 two counts; 1995, Malicious Damage to Property,
17 Disorderly Conduct; 1998, Open Container; 2000,
18 Simple Assault; 2003, Simple Assault and Battery;
19 2006, Molesting or Harassing of Another, Possession
20 with Intent to Distribute Crack Cocaine, Possession
21 with Intent to Distribute Crack Cocaine within a
22 half mile of a school; 2007, Possession with Intent
23 to Distribute Crack Cocaine, Arson second degree.
24 And that would be the victim's record.

25 **THE COURT:** All right. Mr. Johnson, you

1 been provided with a copy of that?

2 **MR. JOHNSON:** Yes, sir, Your Honor.

3 **THE COURT:** You agree that was the record of
4 the victim?

5 **MR. JOHNSON:** Yes, sir, Your Honor.

6 **THE COURT:** All right. Then I'm not making
7 any rulings as to whether or not any of that is
8 admissible. Okay?

9 **MR. JOHNSON:** Understood.

10 **MS. SEAY:** Your Honor, I think at this time,
11 we would be ready to proceed with the Jackson v.
12 Deno hearing.

13 **THE COURT:** All right. Mr. Johnson or Ms.
14 Mitchell, are we ready?

15 **MR. JOHNSON:** Yes, sir, Your Honor.

16 **THE COURT:** Okay.

17 **MS. SEAY:** Your Honor, the State calls
18 Investigator Chris Miller.

19 **THE COURT:** Who's going to swear him?

20 Mr. Miller, you will have to give us a moment.
21 Our clerk had to step outside. She was having some
22 computer problems. There she is.

23 **THE CLERK:** Sorry. Would you raise your
24 right hand please.

25 **CHRIS MILLER**

1 having first been sworn, testifies as follows:

2 **THE CLERK:** Thank you. Would you please
3 state your name for the record.

4 **THE WITNESS:** Christopher Todd Miller.

5 **DIRECT EXAMINATION**

6 **BY MS. SEAY:**

7 **Q** Investigator Miller, where are you employed?

8 **A** The Greenville County Sheriff's Office.
9 Homicide Unit.

10 **Q** How long have you been so employed?

11 **A** I been with the Sheriff's Office since 1994,
12 but I've been in law enforcement for 18 years.

13 **Q** Okay. What's your previous law enforcement
14 experience?

15 **A** I worked with Anderson County prior to
16 Greenville County.

17 **Q** All right. Would you please describe your
18 education and background to perform your duties?

19 **A** Yes, I -- as far as the courses that I've
20 taken?

21 **Q** Yes. Just education and training to be a
22 homicide investigator.

23 **A** I'm a graduate of the Criminal Justice Academy.
24 I've attended numerous classes for Homicide, DNA. I
25 graduated the University of Louisville Homicide School.

1 I been through some profiling serial killer-type courses,
2 uh, blood splatter analysis. Several different courses
3 in that area.

4 Q And do you receive ongoing training to keep you
5 updated on these sorts of matters?

6 A I do.

7 Q Were you working in your current capacity in
8 November of 2010?

9 A I was.

10 Q Did you take a statement from the defendant in
11 this case?

12 A I did.

13 Q What was the date of that statement?

14 A November 9th of 2010.

15 Q Okay. Where was the statement taken?

16 A In my office at the Law Enforcement Center.

17 Q Okay. Would you please describe the physical
18 surroundings of your office at the Law Enforcement
19 Center?

20 A There are six investigators that work in that
21 office. There are six desks. At that time, I was the
22 only investigator working, but I did have Deputy Rosier
23 also there with me.

24 Q Okay. And uh, was Deputy Rosier or Rosier, I'm
25 not sure if I'm pronouncing his name correctly, was he

1 present during the entire taking of the statement?

2 A He was.

3 Q Was the defendant restrained in any way during
4 the taking of the statement?

5 A He was restrained at first. But then, he was
6 placed in a leather waist belt. And he was allowed to
7 keep one hand free.

8 Q Okay. Did you advise him of the nature of your
9 investigation?

10 A Yes, he was advised.

11 Q Did you advise him of his Miranda rights before
12 you took the statement?

13 A I did.

14 Q Okay. I want to show you what's been marked as
15 State's Exhibit 1 for purposes of this hearing. Do you
16 recognize this?

17 A I do.

18 Q How do you recognize that?

19 A That is, uh, our standard Miranda rights form
20 and waiver of rights form and also I recognize my
21 signature.

22 Q All right. What was the date of that waiver of
23 rights?

24 A That was November 9th of 2010.

25 Q All right. Was there a time noted on the

1 waiver?

2 **A** There is. 19:23, which would be 7:23 p.m.

3 **Q** Okay. Please explain what you did in relation
4 to this waiver of rights as far as explaining it to the
5 defendant.

6 **A** Well, first, uh, I asked the defendant for his
7 full name, date of birth, Social Security number and
8 current address. Then I began by telling him that I'm
9 going to read each sentence to him, then I will have him
10 read it back to me to make sure he understands. I first
11 make sure that he understands how to read and write.
12 Once I read the sentence to him and he reads it back, I
13 will have him initial each sentence that he understands.

14 **Q** Okay. Please read each of those rights that
15 you read to the defendant on November 9th, 2010.

16 **A** Before we ask you any questions, you must
17 understand your rights. And he initialed. He read it
18 back and initialed it. You have the right to remain
19 silent. Anything you say can be used against you in
20 court. You have the right to talk to a lawyer for advice
21 before we ask you any questions and to have him with you
22 during questioning.

23 If you have no money to pay a lawyer's fee, the
24 court will appoint one to represent you without cost if
25 you wish. If you decide to stop answering now without a

1 lawyer present, you will still have the right to stop
2 answering at any time. You also have the right to stop
3 answering at any time until you talk to a lawyer. I
4 asked him do you understand what I just read to you. And
5 he initialed it. I stressed to him again you have the
6 right to have an attorney here. This next portion that
7 I'm getting ready to read to you is if you want to talk
8 to me.

9 Q Did he appear to understand and comprehend what
10 you were saying to him?

11 A He did.

12 Q Did he appear to be under the influence of
13 anything at that time?

14 A No, he did not appear to be under the influence
15 of any type of drug or alcohol.

16 Q Did he have any physical or mental disability
17 that you were aware of that would have impaired his
18 ability to understand?

19 A No, ma'am.

20 Q What did he do after you explained those rights
21 to him?

22 A He, uh, refused to sign the waiver portion.

23 Q All right. Did he make any statement to you?

24 A He just said that he didn't want to talk.

25 Q Did he ask for an attorney?

1 A He did.

2 Q What did you do when he said he didn't want to
3 talk and he wanted an attorney?

4 A At that point in time, uh, I told him that I
5 was going to write where the signed portions, refused to
6 sign waiver. I signed my name as a witness and had
7 Deputy Rosier sign his name and then I dated. I put the
8 time down when we both witnessed the form. That was 7:30
9 p.m.

10 Q Did the defendant then reinitiate communication
11 with you?

12 A I advised him that we were waiting on forensics
13 to come to take some photos and that he just needed to be
14 patient. During that time, he reinitiated. He began to
15 talk ---

16 Q Okay.

17 A --- and said that he had changed his mind that
18 wanted to talk to me. I told him that he would have to
19 reinitiate contact before I could talk to him anymore and
20 that I would have to read him his rights all over again.

21 Q Let me show you what's been marked as State's
22 Exhibit 2 for identification purposes. Do you recognize
23 this?

24 A I do.

25 Q How do you recognize it?

1 **A** It's the same form. Same standard sheriff's
2 office form. It has his name and date of birth, Social
3 Security number, current address at the top. This one
4 was began at 19:42, which is 7:42 p.m., November the 9th,
5 2010.

6 **Q** Okay. So how long was it between the time you
7 finished that first waiver and began the second waiver?

8 **A** It was 12 minutes.

9 **Q** Please explain what you did in relation to this
10 second waiver of rights.

11 **A** I again read him each right and sentence.
12 Before we ask you any questions, you must understand your
13 rights. I had him read it back and initial and read the
14 rest. You have the right to remain silent. Anything you
15 say can be used against you in court. You have the right
16 to talk to a lawyer for advice before we ask you any
17 questions and to have him with you during questioning. I
18 stopped there and I said you know that you have the right
19 to have an attorney. You sure you want to continue. He
20 said that he did, so then I continued.

21 If you have no money to pay a lawyer's fee, the
22 Court will appoint one to represent you without cost if
23 you wish. If you decide to answer questions now without
24 a lawyer present, you will still have the right to stop
25 answering at any time. You also have the right to stop

1 answering at any time until you talk to a lawyer. He
2 initialed each of those sentences, read them back and
3 stated that he understood. Then I read the waiver
4 portion, which is at the bottom of the form.

5 Q Okay. Please read that to the court.

6 A I have read this statement of my rights and I
7 understand what my rights are. I am willing to make a
8 statement and answer questions. I do not want a lawyer
9 at this time. I understand and know what I'm doing. No
10 promises or threats have been made to me and no pressure
11 or coercion. And I stopped and asked him if he knew what
12 coercion meant. And he wasn't really sure. So I advised
13 him of what it was. It was trickery. No one was going
14 to trick him or try to make him say something to
15 incriminate himself. So no pressure or coercion of any
16 kind has been used against me. At that time, I asked him
17 if he wanted to talk to me that I needed him to sign a
18 section of the form, which he did.

19 Q All right. Did you sign as a witness to the
20 document?

21 A I did.

22 Q Did anyone else sign as a witness to that?

23 A Deputy Rosier.

24 Q Was he present during this entire process that
25 you'd just gone through?

1 A Yes, ma'am.

2 Q Okay. Uh, and what time -- you may have said
3 this. But what time did you finish the second waiver?

4 A We concluded it at 19:51, which was 7:51 p.m.

5 Q Okay. What did you do next?

6 A Well, at that point, uh, the, uh, Forensics
7 Unit Hamilton showed up. And we took the photos.

8 Q Took photos of what?

9 A Of his person.

10 Q Okay.

11 A And once that was finished, we then took the
12 written statement in which the Miranda rights is at the
13 beginning of that. We read that to him again.

14 Q All right. Let me show you State's Exhibit 3
15 for identification purposes for this hearing. Do you
16 recognize this?

17 A I do.

18 Q How do you recognize that?

19 A That is the standard defendant's statement form
20 from the Greenville County Sheriff's Office.

21 Q Okay. And I believe you just stated that it
22 contains a waiver of rights on the top of it as well?

23 A It does.

24 Q Okay. Would you please read that for the
25 court?

Chris Miller - Direct Examination by Ms. Seay

1 **A** It says, I, Gregory Earl Gosnell, do hereby
2 give freely and voluntarily this statement to
3 Investigator Chris T. Miller and Deputy Chris Rosier who
4 have identified themselves to me to be deputies of the
5 Greenville County Sheriff's Office, Greenville, South
6 Carolina. I have been advised that I do not have to make
7 this or any other statement and that what I say can be
8 used against me in a court of law. I have been advised
9 that I have a right to counsel with an attorney of my
10 choice. If I am financially unable to obtain an
11 attorney, the Court will appoint an attorney to represent
12 me. I have not been threatened or promised any reward to
13 make this statement.

14 **Q** Okay. Did he appear to understand that when
15 you wrote it to him?

16 **A** He did.

17 **Q** Did he initial that waiver of rights?

18 **A** He did.

19 **Q** Did he then give you the statement that's
20 contained there on that piece of paper?

21 **A** Yes.

22 **Q** What's the process that you used to obtain a
23 statement?

24 **A** I, uh, -- when I take a statement, I first get
25 some background on the person. I make sure I get their

1 date of birth, Social Security number and then I ask them
2 where they went to school. I ask about their education,
3 you know, if they are able to read or write. I, again,
4 make sure that they are not under the influence of any
5 type of drug or alcohol and that they are willing to give
6 me a statement and let me type it for them. Once that,
7 uh, -- if they agree to that, then I type as they talk.
8 And once the statement is finished, uh, I usually give
9 them a red pen. I have them read that copy before
10 signing it to see if there's anything that they don't
11 agree with or anything that they didn't say that I may
12 have mistyped or whatever the case may be. And I also --
13 once that's done, if they approve the statement, I
14 usually will have them write in their handwriting at the
15 bottom of the statement.

16 Q Did you establish that he could read and write?

17 A I did.

18 Q And I believe you already testified to the fact
19 that he did not appear to be under the influence of
20 anything at that time?

21 A That's correct.

22 Q And you typed this statement yourself?

23 A I did.

24 Q Did you type what he told you?

25 A Yes, ma'am.

1 Q Uh, when you gave him the opportunity to read
2 it, did he make any corrections?

3 A No, ma'am.

4 Q Did he make any additions to the statement?

5 A He wrote in his own handwriting at the bottom
6 in blue ink.

7 Q Okay. What did he write?

8 A He initialed the end of the typed statement and
9 then out to his initials, he wrote, "I sorry. Didn't
10 want this to happen. I so sorry. Signed, Greg Gosnell."

11 Q Okay. Did he sign the statement as being true
12 and correct as best he could recall?

13 A He did.

14 Q Did you give him a copy of the statement?

15 A Yes, ma'am.

16 Q Did he sign that he had received a copy?

17 A He did.

18 Q Did you sign as a witness to that statement?

19 A I did.

20 Q Did Deputy Rosier sign as a witness to the
21 statement?

22 A Yes, ma'am.

23 Q Approximately how long did the entire process
24 take, both of the waivers and the statement? Do you have
25 an approximation?

1 A This statement started at 8:15 p.m. and
2 probably an hour and a half at least.

3 Q During that time, was Mr. Gosnell denied access
4 to the bathroom, food or drink during this process?

5 A No. He was offered food. He was offered
6 drink. I made some coffee and gave him some coffee.
7 Also he was allowed to smoke, which provided some
8 cigarettes for.

9 Q You provided the cigarettes?

10 A Yes.

11 Q All right. Were any threats or promises made
12 in exchange for the waiver of rights or the statement?

13 A No, ma'am.

14 Q Did you or anyone in your presence coerce the
15 defendant into signing the waiver of rights or the
16 statement?

17 A No, ma'am.

18 Q And to the best of your knowledge, was the
19 defendant's statement freely and voluntarily given?

20 A It was.

21 Q I don't have any further questions for this
22 witness.

23 **THE COURT:** Ms. Mitchell or Mr. Johnson?

24 **MR. JOHNSON:** Thank you, Your Honor.

25 **CROSS-EXAMINATION**

1 BY MR. JOHNSON:

2 Q Now, where did you question my client?

3 A In my office.

4 Q In your office. And that's at the Law
5 Enforcement Center?

6 A Yes, sir.

7 Q Now, you stated that he was in a belt or a
8 waist belt, is that what you described it was?

9 A Yeah, a leather waist belt.

10 THE COURT: You didn't use the interrogation
11 room, just used your actual office?

12 THE WITNESS: At that time, we were
13 remodeling. We didn't have an interrogation room.

14 THE COURT: Okay.

15 BY MR. JOHNSON:

16 Q In your office, was anyone present other than
17 you and -- it looks like Rosier signed. Was anyone else
18 present?

19 A No, it was after hours. Everyone was gone.

20 Q Okay. Now, the belt that you said, you said it
21 restricted one hand? Which hand did it restrict?

22 A I always ask if they are left-handed or right-
23 handed. It was restricting his left hand so he could
24 drink his coffee.

25 Q So it restricted his left hand, but his right

1 hand, how much did he move it?

2 A He was unhandcuffed.

3 Q He was unhandcuffed but handcuffed to his
4 waist?

5 A Left one was.

6 Q The left one was but the right one was free?

7 A Right.

8 Q Okay. Understood. How much could he move the
9 left hand?

10 A (Demonstrating.)

11 Q Just like this? (Demonstrating.)

12 A Yeah.

13 Q Okay. Now, how did he get to your office? How
14 was he transported there? Was it in a police car? Did
15 he drive there?

16 A He was transported in a police car.

17 Q At that point in time, for example, the first
18 time he said I don't want to waive my right to an
19 attorney, was he free to leave at that point?

20 A No.

21 Q Was he under arrest at that point?

22 A Yes.

23 Q So he was already under arrest at the time you
24 started to question him?

25 A Yes, sir.

1 Q Okay.

2 A Yes, sir.

3 Q Now, you also stated that when you went through
4 the statement, that when you went through the waiver of
5 rights that you read aloud the waiver and he read it back
6 to you?

7 A Uh-huh.

8 Q And you felt that he did that effectively and
9 he was able to understand all the words and everything of
10 that nature as you understood it?

11 A Yes, sir.

12 Q Okay. Now, did you ever ask him if he had an
13 attorney?

14 A He told me that he wanted an attorney. I never
15 asked him if he had one.

16 Q You didn't ask him if he had one?

17 A No.

18 Q Okay. Were you aware that he had a pending
19 charge at that time?

20 A No, sir.

21 MR. JOHNSON: Uh, well, for the Court,
22 judicial notice he was also -- he had been arrested
23 for Burglary third represented by the Solicitor's
24 office.

25 THE COURT: I doubt he was represented by the

1 Solicitor.

2 **MR. JOHNSON:** Well, the Solicitor's office
3 had the charge, Your Honor. Apologies.

4 **THE COURT:** Okay.

5 **BY MR. JOHNSON:**

6 **Q** So you weren't aware that the Public Defender's
7 Office had already sent the Solicitor's office notice
8 that he had representation?

9 **A** No, I was not aware.

10 **THE COURT:** Did you question him at all about
11 any other charges?

12 **THE WITNESS:** No, sir.

13 **THE COURT:** Did he mention it?

14 **THE WITNESS:** No, sir.

15 **MR. JOHNSON:** Your Honor, just for exhibits
16 purposes, I'd like this marked as Defendant's
17 Exhibit number 1 just for purposes of this. 2?
18 Okay. Court's Exhibit 2.

19 (WHEREUPON, Defendant's Exhibit 2 is marked for
20 identification purposes.)

21 **MR. JOHNSON:** Permission to approach, Your
22 Honor?

23 **THE COURT:** Yes, sir.

24 **BY MR. JOHNSON:**

25 **Q** Investigator Miller, you know what that is?

1 You can take your time and read it.

2 A (Reading.)

3 Q You can refer to it. Would you please portray
4 to the Court what that is as far as your understanding?

5 A It's a notice, invocation of the Fifth and
6 Sixth Amendment Rights.

7 Q Okay. And it's also a notice of
8 representation?

9 A Right.

10 Q And that was sent to the Solicitor's office.

11 A Correct.

12 Q Okay. So it also asserts, and I'll point to
13 you. If you don't mind, just read this paragraph for us.

14 A Please take notice that the defendant by and
15 thru his attorney hereby asserts his Fifth Amendment
16 right to remain silent and does not wish to be questioned
17 in the absence of his attorney. The defendant further
18 asserts his Sixth Amendment right to have said counsel
19 present at all critical stages of prosecution. These
20 assertions are made pursuant to the Constitutions of the
21 United States and South Carolina as well as McNeil v.
22 Wisconsin.

23 MR. JOHNSON: Your Honor, I have no further
24 questions at this time.

25 THE COURT: All right.

REDIRECT EXAMINATION

BY MS. SEAY:

Q Investigator Miller, uh, did you get into anything other than the crime that you were talking to him about, the murder of Donnie Page?

A No.

Q Did you question him at all about the, I think it's a burglary that's listed on that notice of representation?

A I was not aware of that charge.

Q Okay. So you weren't even aware of it. Thank you. I have no further questions.

MR. JOHNSON: No redirect, Your Honor.

THE COURT: You may step down. Thank you.

MS. SEAY: We call Deputy Chris Rosier.

THE CLERK: Deputy Rosier, come forward to be sworn in please.

CHRIS ROSIER

having first been sworn, testifies as follows:

THE CLERK: Thank you. You may be seated. Would you please state your full name for the record.

THE WITNESS: Christopher John Rosier.

THE CLERK: Thank you.

DIRECT EXAMINATION

1 BY MS. SEAY:

2 Q Deputy Rosier, you are employed by the
3 Greenville County Sheriff's office as well?

4 A I am.

5 Q How long have you been employed there?

6 A Uh, 10 years.

7 Q Do you have any previous law enforcement
8 experience?

9 A I do not.

10 Q What's your education and background to perform
11 your duties?

12 A I'm a -- I have a Bachelor's Degree in Criminal
13 Justice from the state of South Carolina and I attended
14 the Criminal Justice Academy.

15 Q Okay. What are your current duties?

16 A I'm assigned to the warrant division and a
17 plain clothes officer inside the warrant division.

18 Q Okay. Were you working in that capacity in
19 November of 2010?

20 A I was.

21 Q Did you have occasion to come into contact with
22 this defendant, Gregory Gosnell?

23 A I did.

24 Q Please explain the circumstances.

25 A On, I believe it's November the 9th, 2010, I

1 received a call from Investigator Pelt out of our
2 Property Crimes Unit which is based in our Northern Air
3 Command stating that he been in contact with some of the
4 family members of Mr. Gosnell and Mr. Gosnell wanted to
5 turn himself in and he wanted to do it within an hour.
6 So at that time, I went up to our Northern Air Command
7 Unit and met with Investigator Pelt. He advised me that
8 Mr. Gosnell was on his way to turn himself in. As soon
9 as Mr. Gosnell got to the Northern Air Command Unit, I
10 placed him under arrest and placed him in the back of my
11 vehicle at that time.

12 Q All right. Did you read the defendant his
13 Miranda rights?

14 A I did.

15 Q Please explain how you did that.

16 A Went to place the handcuffs on Mr. Gosnell and
17 place him in the rear of my vehicle. I have a card that
18 I usually read. And I read it to him.

19 Q Okay. Would you please read the rights that
20 you read to him that day?

21 A Yes, ma'am. It says you have the right to
22 remain silent. Anything you say can and will be used
23 against you in a court of law. You have a right to talk
24 to an attorney and have one present with you while you're
25 answering -- being questioned. If you can not afford to

1 hire an attorney, one will be appointed to represent you
2 before any questions if you wish. If you decide at any
3 time to exercise these rights and not answer any
4 questions or make statements. Do you understand these
5 rights that I have explained to you? Do you wish --
6 having these rights in mind, do you wish to speak with
7 me?

8 Q Okay. How did the defendant respond, if at
9 all?

10 A He did respond. He advised me that he wanted
11 to speak with Investigator Miller about the case.

12 Q Okay. Did you take him to meet with
13 Investigator Miller?

14 A I did.

15 Q Uh, and did you take him to the Law Enforcement
16 Center?

17 A I did.

18 Q Where did you go in the Law Enforcement Center?

19 A Went to Investigator Miller's office, which is
20 on the second floor.

21 Q All right. Did you stay in the room while
22 Investigator Miller read the defendant his rights?

23 A I did.

24 Q Was there anyone else present?

25 A No.

1 Q Was he restrained, Mr. Gosnell, when you turned
2 him over to Investigator Miller?

3 A When I turned him over, I took my handcuffs
4 off. I do believe Investigator Miller did place some
5 type of restraining device on him.

6 Q Okay. Let me show you State's Exhibit 1 for
7 identification purposes for this hearing. Do you
8 recognize that?

9 A I do.

10 Q How do you recognize it?

11 A This is our standard waiver of rights form.

12 Q Okay. Does your signature appear on that form?

13 A It does.

14 Q Did you witness Investigator Miller read the
15 defendant his rights?

16 A I did.

17 Q Did you witness the defendant initial each of
18 those rights?

19 A I did.

20 Q Did he appear to understand what was going on?

21 A He did.

22 Q Did he appear to be under the influence of
23 anything?

24 A He did not.

25 Q Did he appear to have any physical or mental

1 disability that would have impaired his ability to
2 understand?

3 A He did not.

4 Q At some point, did Mr. Gosnell ask for a
5 lawyer?

6 A He did.

7 Q What did Investigator Miller do when Mr.
8 Gosnell asked for a lawyer?

9 A He advised Mr. Gosnell that that was fine and
10 stopped talking to him.

11 Q He discontinued talking to Mr. Gosnell?

12 A That's correct.

13 Q And after that happened, did Mr. Gosnell
14 continue talking to Investigator Miller?

15 A Yes. I believe so. There was a pause, but
16 yes, he did so.

17 Q What did Investigator Miller do?

18 A Investigator Miller then advised him that he'd
19 have to read him his rights again and start providing
20 another form.

21 Q Did Investigator Miller advise him that he
22 would have to reinitiate the contact in order for him to
23 continue talking to him?

24 A Yes, ma'am. I believe so.

25 Q This is State's Exhibit 2 for identification

1 purposes for this hearing. Do you recognize this?

2 A I do.

3 Q How do you recognize it?

4 A It's a standard form, our waiver of rights
5 form. And my name is at the bottom. My signature.

6 Q Did, uh, the defendant initial each of those
7 rights on that waiver?

8 A He did.

9 Q Let me ask you this. Did Investigator Miller
10 when he read those rights to the defendant, did he
11 emphasize any particular portion of those rights?

12 A He did. He emphasized you have a right to
13 speak to a lawyer and have him questioned -- have him
14 there while you have any questions.

15 Q Did Investigator Miller appear to want Mr.
16 Gosnell to understand his right to a lawyer after he had
17 said I want a lawyer?

18 A Yes, he did.

19 Q Did you witness the defendant's signature on
20 that waiver?

21 A Yes, I did.

22 Q I'm going to show you State's Exhibit 3 for
23 identification purposes. Do you recognize that?

24 A I do.

25 Q Does your signature appear as a witness on that

1 statement?

2 **A** It is.

3 **Q** Did you witness Investigator Miller read the
4 waiver of rights that appeared at the top of that
5 statement?

6 **A** I did.

7 **Q** Did you witness the defendant initial those
8 rights?

9 **A** I did.

10 **Q** And were you present when Investigator Miller
11 took the stand?

12 **A** I was.

13 **Q** Did you witness the defendant sign that
14 statement as being true and correct?

15 **A** I did.

16 **Q** Did Investigator Miller provide a copy of it to
17 the defendant?

18 **A** He did.

19 **Q** Did you witness the defendant sign that he
20 received that copy?

21 **A** I did.

22 **Q** Did you or Investigator Miller or anybody make
23 any threats or promises in exchange for the waivers of
24 rights -- the waiver of rights or the statement?

25 **A** We did not.

1 **Q** Did you or Investigator Miller or anybody else
2 coerce the defendant into signing either one of those
3 documents?

4 **A** No, we did not.

5 **Q** To the best of your knowledge, was it freely
6 and voluntarily given?

7 **A** It was.

8 **Q** Did Investigator Miller or you question Mr.
9 Gosnell about any other crimes?

10 **A** No, ma'am.

11 **Q** Thank you. Those are all the questions I have.

12 **MR. JOHNSON:** Your Honor, I have no questions
13 for this witness.

14 **THE COURT:** All right. You may step down.
15 Ms. Seay, anything further?

16 **MS. SEAY:** Nothing further on this matter,
17 Your Honor.

18 **THE COURT:** Mr. Johnson?

19 **MR. JOHNSON:** Your Honor, I'm going to call
20 my client to the stand.

21 **THE COURT:** All right.

22 **THE CLERK:** Mr. Gosnell, please come forward
23 to the stand. Place your left hand on the Bible and
24 raise your right.

25 **GREGORY GOSNELL**

1 having first been sworn, testifies as follows:

2 **THE CLERK:** Thank you. You may be seated.

3 Please state your name for the record.

4 **THE WITNESS:** My name is Gregory Earl
5 Gosnell.

6 **THE CLERK:** Thank you.

7 **DIRECT EXAMINATION**

8 **BY MR. JOHNSON:**

9 **Q** Gregory, how old are you?

10 **A** 48.

11 **Q** How far did you go in school?

12 **A** Like eighth, ninth grade.

13 **Q** Eighth or ninth grade? I'm going to show you
14 what's been marked as State's Exhibit 3. You recognize
15 that?

16 **A** It's a statement.

17 **Q** Who's statement?

18 **A** It's my statement.

19 **Q** It's your statement. Now, the statement itself
20 is written in typewritten letters, is that right?

21 **A** Yeah, it's typed in.

22 **Q** Okay. Can you read that?

23 **A** I can't read all of it. Some words.

24 **Q** You can read some of it. Are you portraying to
25 the Court that you don't really understand what it says?

1 A Not all of it, sir.

2 Q Now, on that form, it says that you can read or
3 write and you signed it. Isn't that right?

4 A Yes, sir.

5 Q Why did you do that?

6 A Scared.

7 Q But you are telling the Court today that you
8 don't understand what it says?

9 A No, sir. I don't have an education.

10 Q Can you try to read it?

11 A I can try to read it. I have known Pam Daniels
12 for about a year, year and a half. We started something.
13 When we first met, I (inaudible) to get her from
14 Spartanburg.

15 Q Okay. Okay. You can stop. Put that back.
16 Now, do you recognize what this is or what these are?

17 A Waiver of rights.

18 Q Waiver of rights forms and there's two of them.
19 Do you remember why there's two of them?

20 A No, sir.

21 Q You don't remember why there's two of them?

22 A Huh-uh. Not two of them.

23 Q You don't remember refusing to sign one and
24 then signing the other?

25 A Huh-uh.

1 Q You don't remember that? Okay. Now you see on
2 the waiver of rights form -- and I'll ask you to pick one
3 up and I'll look at the other one. Pick one up please.
4 And I'll look at the other one -- that you initialed out
5 to the side of each line. Do you see that?

6 A Yes, sir.

7 Q Now, the investigator just testified that he
8 read those aloud and then you read it back to him, is
9 that right?

10 A He might have read them to me, but I never read
11 them back cause I can't read.

12 Q You can't read that?

13 A Huh-uh.

14 Q Okay. Are you portraying to the Court that you
15 did not read that back to him?

16 A Yes, sir.

17 Q All right. Now, who am I?

18 A Brian Johnson, my attorney.

19 Q Now, before this charge, this charge of murder
20 and burglary, I represented you, is that right?

21 A Yes, sir.

22 Q Okay. Now, did you understand who I was at the
23 time you gave this statement?

24 A Of this?

25 Q Yeah.

1 **A** Yeah, I knew who you was.

2 **Q** You knew who I was. Now, he asked you if you
3 wanted a lawyer. Did you bring my name up or did you say
4 anything about me?

5 **A** I told him I wanted my attorney there.

6 **Q** You wanted your attorney. But did you say my
7 name?

8 **A** No. I didn't.

9 **Q** But you portrayed that -- did you portray that
10 you wanted a attorney or you wanted your attorney?

11 **A** I wanted an attorney there.

12 **MR. JOHNSON:** Okay. Your Honor, I have
13 nothing further for purpose of this hearing.

14 **THE COURT:** All right.

15 **CROSS-EXAMINATION**

16 **BY MS. SEAY:**

17 **Q** Mr. Gosnell, I want to show you State's Exhibit
18 1 for identification purposes. Are these your initials
19 right here?

20 **A** Those my initials, ma'am.

21 **Q** G.G.?

22 **A** Uh-huh.

23 **Q** Before we ask you any questions, you must
24 understand your rights. Is that what Investigator Miller
25 read to you?

1 A Uh-huh.

2 Q And you initialed there beside it?

3 A He read it to me and I initialed it.

4 Q You have the right to remain silent. Did you
5 put your initials right there?

6 A Yes, ma'am.

7 Q Anything you say can be used against you in
8 court. Did you place your initials there?

9 A Yes, ma'am.

10 Q You have the right to talk to a lawyer for
11 advice before we ask you any questions and to have him
12 with you during questioning. Did you put your initials
13 there?

14 A Yes, ma'am.

15 Q If you have no money to pay a lawyer's fee, the
16 Court will appoint one to represent you without cost if
17 you wish. Did you put your initials there?

18 A Yes, ma'am.

19 Q If you decide to answer questions now without a
20 lawyer present, you will still have the right to stop
21 answering at any time. You also have the right to stop
22 answering at any time until you talk to a lawyer. Did
23 you put your initials there?

24 A Yes, ma'am.

25 Q All right. Is it, uh, after that that you told

1 Investigator Miller that you wanted an attorney present?

2 A Yes, ma'am. I told him I wanted an attorney.

3 Q At that time, Investigator Miller stopped
4 asking you questions, didn't he?

5 A Yes, ma'am.

6 Q And you continued to talk to Investigator
7 Miller. Is that correct?

8 A Yes, ma'am.

9 Q Okay.

10 A He told me -- while I was giving a statement,
11 he said I'm going to put this in your statement. It will
12 really help you.

13 Q Okay. But you continued -- after you told him
14 that you wanted an attorney present, you continued
15 talking to him about the -- what had happened, is that
16 correct?

17 A Yes, ma'am.

18 Q And so Investigator Miller then told you that
19 you would need to reinitiate contact with him, didn't he?

20 A Uh-huh.

21 Q All right. And in fact, uh, he told you that
22 he would need to read you your rights again, is that
23 right?

24 A I think so.

25 Q Okay. This is State's Exhibit 2 for

1 identification purposes. Are those your initials?

2 A Uh-huh.

3 Q And these are the same rights that I just went
4 through with you. They are the very same ones. Did you
5 place your initials beside each of those rights?

6 A Yes, ma'am.

7 Q And then this waiver of rights, did
8 Investigator Miller read this to you? I have read this
9 statement of my rights and I understand what my rights
10 are. I'm willing to make a statement and answer
11 questions. I do not want a lawyer at this time. I
12 understand and know what I am doing. No promises or
13 threats have been made to me and no pressure or coercion
14 of any kind has been used against me.

15 A He never read that to me.

16 Q He didn't?

17 A No.

18 Q Did you sign right here?

19 A Yes, ma'am.

20 Q Okay. That's your signature?

21 A Yes, ma'am.

22 Q Okay. This is State's Exhibit 3. Investigator
23 Miller then read to you again that you were freely and
24 voluntarily giving this statement that -- to Investigator
25 Miller and Deputy Rosier who have identified themselves

1 to me to be deputies of the Greenville County Sheriff's
2 Office, Greenville, South Carolina. I have been advised
3 that I do not have to make this or any other statement
4 and that what I say can be used against me in a court of
5 law. I have been advised that I have a right to consult
6 with an attorney of my choice. If I am financially
7 unable to obtain an attorney, the Court will appoint an
8 attorney to represent me. I have not been threatened or
9 promised any reward to make this statement. Investigator
10 Miller read that to you, didn't he?

11 A Uh-huh.

12 Q Okay.

13 A That's right.

14 Q And you initialed at the beginning of this
15 paragraph where it says I attended Travelers Rest High
16 School where I finished the ninth grade. And it says I
17 have given Investigator Chris Miller permission to type
18 my statement for me. I'm not under the influence of any
19 type of drugs or alcohol at this time. I'm giving this
20 statement to Investigator Miller because I want him to
21 know the truth about what happened. I have not been
22 promised any gifts or rewards for giving this statement.
23 I am giving this statement of my own freewill. Are those
24 your initials right there?

25 A Yes, ma'am.

1 Q And you placed them there?

2 A Yes, ma'am.

3 Q Okay. Then this long paragraph is the
4 statement that you gave to Investigator Miller, is that
5 right?

6 A Uh-huh.

7 Q And you put your initials right here?

8 A Yes, ma'am.

9 Q And then you put your initials here at the end
10 of the paragraph, didn't you?

11 A Yes, ma'am.

12 Q All right. And is this your handwriting, "I
13 sorry; didn't want this to happen; I so sorry" and your
14 signature, Greg Gosnell?

15 A Uh-huh.

16 Q Did you write that?

17 A Uh-huh.

18 Q Okay. I have read the above statement of one
19 page. It is true and correct as best I recall. Is that
20 your signature?

21 A That's my signature.

22 Q All right. I have received a copy of this
23 statement.. Is that your signature?

24 A Yes, ma'am.

25 Q All right. So you signed this statement that

1 it's true as best you could recall, didn't you?

2 A Yes, ma'am.

3 Q And you signed that you received a copy of it,
4 didn't you?

5 A Yes.

6 Q You initialed here and here?

7 A Yes, ma'am.

8 Q All right. Thank you. Those are all the
9 questions that I have for you.

10 MR. JOHNSON: Brief redirect.

11 REDIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q Gregory, she went over all the things that you
14 initialed and all the things that you signed, is that
15 right? She just did that?

16 A Yes, ma'am.

17 Q Now, understanding that you did that, in spite
18 of that fact, did you understand the waiver of rights
19 form? Did you understand it?

20 A No, I didn't understand it.

21 Q But you said you initialed it and you signed it
22 nonetheless?

23 A Yes.

24 Q As far as your statements are concerned, you
25 portrayed to the Court earlier that you don't really know

1 what it says. Is that still true?

2 **A** Yeah.

3 **Q** But you signed it anyway?

4 **A** Yes, sir.

5 **Q** Do you know what waiver means?

6 **A** No, I don't know what waiver means.

7 **Q** I mean, can you try to portray to the Court

8 what waiver means?

9 **A** I don't have no idea what waiver means.

10 **Q** But you know what rights are, don't you?

11 **A** I know what rights are.

12 **Q** What are rights?

13 **A** Like you have the right to remain silent, like

14 that.

15 **Q** Okay. Okay.

16 **MR. JOHNSON:** Your Honor, I have nothing

17 further.

18 **THE COURT:** Anything further?

19 **MS. SEAY:** Nothing further, Your Honor.

20 **THE COURT:** All right. You may step down.

21 Mr. Johnson?

22 **MR. JOHNSON:** Your Honor, I have no other

23 witnesses to call.

24 **THE COURT:** All right. Under the totality of

25 the circumstances, -- let me hear from you. I'll

1 let you make a statement on it.

2 **MS. SEAY:** Thank you, Your Honor. Your
3 Honor, the State's position would be that the
4 defendant freely and voluntarily waived his rights
5 and gave this statement freely and voluntarily.
6 During the process, as you've heard, Investigator
7 Miller was questioning him and the defendant --
8 excuse me. Not questioning him. Reading him the
9 first waiver of rights. The defendant stated I want
10 an attorney. Investigator Miller then appropriately
11 stopped questioning the defendant. The defendant
12 continued to walk to talk to Investigator Miller at
13 which time Investigator Miller advised him that he
14 would have to reinitiate contact with him. The
15 defendant expressed that he wanted to continue
16 talking to Investigator Miller. Deputy Rosier's
17 testimony supports Investigator Miller.

18 The, uh, defendant then signed the waiver of
19 rights. He initialed each of the lines of the
20 statement -- of each of the rights. He then gave
21 this lengthy statement. He was given an opportunity
22 to look back through the statement and make any
23 changes he wanted to. In fact, he added two
24 sentences to the statement and then signed it. He
25 signed that it was true and correct as best he could

1 recall and that he received a copy of it. Your
2 Honor, uh, insofar as him having another charge
3 pending, this investigator was not even aware that
4 he had another charge pending. He did not question
5 him about that crime in any way. That was also
6 supported by Deputy Rosier's testimony.

7 I think the case law would support that is
8 appropriate for law enforcement to question a
9 defendant on a separate matter even though he may be
10 represented on another matter. He can still waive
11 his rights to an attorney on another matter, a
12 separate transaction so to speak.

13 **THE COURT:** All right. Mr. Johnson.

14 **MR. JOHNSON:** Thank you, Your Honor. Two
15 arguments essentially. The first one is, obviously,
16 it's a violation of his Fifth Amendment. I think
17 the testimony supported that he was in custody. He
18 was under arrest. He wasn't free to leave. He was
19 interrogated and Miranda warnings were given. I
20 think the question here of whether it was a waiver
21 knowingly and intelligently -- uh, did he knowingly
22 and intelligently waive his rights.

23 I think it's pretty clear from the testimony of
24 my client that he, uh, could not read and did not
25 understand the form despite signing it. And I think

1 that happens some times. Due to someone's
2 intelligence, it doesn't have to be coercion but it
3 could be rather easily encouraged to sign a form of
4 that nature. But I don't think he understood what
5 it is that he was signing. He doesn't even know
6 what waiver means. He portrayed that to the Court.
7 I think he did that honestly considering he does
8 understand what rights are. I don't believe that
9 the rights are -- the waiver was knowingly and
10 intelligently.

11 The second thing is, Your Honor, I believe that
12 the Fifth Amendment rights are not offense specific
13 as opposed to Sixth Amendment rights which are
14 offense specific meaning that if he has an attorney
15 and the attorney asserts his rights as he did in the
16 Court's Exhibit, his right to remain silent, his
17 Fifth Amendment rights, I believe that applies to
18 any and everything as opposed to Sixth Amendment
19 rights which are offense specific. Fifth Amendment
20 rights, as I understand it, are not offense
21 specific. Therefore, they violated his rights as
22 the Public Defender's office as his attorneys did
23 assert his right to silence.

24 **THE COURT:** All right. I find that under the
25 totality of the circumstances, the State has met its

Ruling of the Court

1 burden by showing by a preponderance of the evidence
2 that this was a voluntary statement. I am
3 considering such things as the length of the
4 interrogation, the location of the interrogation. A
5 rather short interrogation that took place in an
6 office rather than even in an interrogation room. I
7 considered all the factors surrounding the
8 interrogation including the fact that he did have a
9 restraint or at least a partial restraint on. I
10 considered that.

11 I considered the defendant's maturity, his
12 educational level, his physical condition, his
13 mental health. I have considered the fact that he
14 was, in fact, mirandized and the fact that there is
15 no evidence, even from the defendant, that there was
16 ever any coercion or misrepresentation of facts or
17 promise made, promise of leniency made to this
18 defendant. Considering all the factors, I believe
19 that this defendant did reinitiate after, uh, he was
20 advised of his constitutional rights. He did
21 request an attorney. He reinitiated contact with the
22 police as described in Edwards versus Arizona that
23 he did reinitiate and he was remirandized. He was
24 read his rights.

25 I don't think there was any question that he

1 was given an opportunity to again cut off
2 interrogation, which he did not. I believe his
3 statement under the facts of this case and by
4 preponderance of the evidence was free and voluntary
5 and I'm going to allow the statement.

6 **MR. JOHNSON:** Your Honor, would you please --
7 I asserted a second argument, the Fifth Amendment
8 right. Would you mind ruling on the record?

9 **THE COURT:** Right to counsel?

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** And I find that he did waive his
12 right to counsel. Even if he had or his attorney
13 had said that he wanted his attorney present at all
14 stages, in this particular case, he, uh, invoked his
15 right to counsel, uh, invoked his right to counsel,
16 but then later, after some thought, waived that
17 right to counsel. There's no question, I think in
18 my mind that this defendant understands that he has
19 a Sixth Amendment right.

20 There is no characterization at all concerning
21 that prior offense. I don't think that law
22 enforcement knew anything about that prior offense.
23 Even if counsel -- right to counsel had been invoked
24 by his attorneys that he later waived that right
25 after having acknowledged for the second time that

1 he chose to waive his right to have his counsel
2 present. I'm going to allow this statement. Okay?

3 **MR. JOHNSON:** Yes, sir, Your Honor.

4 **MS. SEAY:** Thank you, Your Honor.

5 **THE COURT:** All right. What else do we have?

6 **MS. SEAY:** I don't believe there's anything
7 further from the State at this time, Your Honor.

8 **THE COURT:** Mr. Johnson?

9 **MR. JOHNSON:** No, sir. Nothing further at
10 this point.

11 **THE COURT:** Okay. We will be back at two
12 o'clock. We will draw our jury. I think they have
13 45 coming back for us. I want to make sure we're in
14 agreement as to the number of strikes. I believe
15 it's five and ten.

16 **MS. SEAY:** That sounds right to me, Your
17 Honor.

18 **MR. GOSNELL:** Your Honor, can I say
19 something?

20 **THE COURT:** Yes, sir.

21 **MR. GOSNELL:** I'd like to stop this trial
22 right now, Your Honor, and plea guilty.

23 **MR. JOHNSON:** Hold on. Hold on. I'll speak
24 to you about that if you want me to. But you can't
25 get up and put something on the record. Have a

1 seat.

2 THE COURT: All right.

3 MR. JOHNSON: Your Honor, may I have a
4 moment?

5 THE COURT: Yes, sir.

6 (WHEREUPON, there is a pause.)

7 THE COURT: Let me ask. Is it my
8 understanding that Mr. Gosnell now wishes to
9 withdraw his plea of not guilty and enter a plea of
10 guilty? Is that what I --

11 MR. JOHNSON: If I may speak for him. I want
12 to make sure that this is what he really wants to
13 do. If I could just have five minutes to go over
14 the sentencing sheets.

15 THE COURT: Certainly. Certainly. And I
16 would assume it's the lesser included offense.

17 MR. JOHNSON: Your Honor, I believe, and the
18 Solicitor can correct me, this would be manslaughter
19 and not subject to LWOP.

20 THE COURT: Okay. I want to make certain
21 that that's what you're talking to him about.

22 MR. JOHNSON: Yes, sir, Your Honor.

23 THE COURT: Okay.

24 MS. SEAY: The voluntary manslaughter would
25 be a lesser included offense of the murder.

1 However, I do think the voluntary manslaughter is a
2 considered a most serious offense so it would be
3 subject to the life without parole notice which we
4 would withdraw at the time of the plea.

5 **THE COURT:** All right. So you are
6 withdrawing that?

7 **MS. SEAY:** If he pleads guilty.

8 **THE COURT:** That's what I want to understand.
9 You are withdrawing the State's request for life
10 without parole on his plea to voluntary
11 manslaughter.

12 **MS. SEAY:** That's correct.

13 **THE COURT:** And you would dismiss the murder
14 charge and allow him to plea to voluntary
15 manslaughter as a lesser included offense?

16 **MS. SEAY:** That is correct.

17 **THE COURT:** The maximum exposure there would
18 be 25 or 30?

19 **MR. JOHNSON:** 30.

20 **MS. SEAY:** 30 years.

21 **THE COURT:** The maximum would be 30 years.
22 Okay. And you are withdrawing the life without
23 parole?

24 **MS. SEAY:** In the event that he does plead
25 guilty.

1 **THE COURT:** Okay. You are not seeking it.
2 All right. Thank you very much. I just wanted to
3 make sure, Mr. Johnson, your client understood ---
4 **MR. JOHNSON:** Yes, sir, Your Honor.
5 **THE COURT:** --- what's being offered. That
6 there was an offer out there.
7 **MR. JOHNSON:** Yes, sir, Your Honor.
8 **THE COURT:** All right. Why don't we just
9 recess for 10, 15 minutes ---
10 **MR. JOHNSON:** Yes, sir, Your Honor.
11 **THE COURT:** --- to see if that's what he
12 wishes to do. If that's what he wishes to do, Ms.
13 Seay, why can't I take his plea and hold sentencing
14 in abeyance until such time as you are able to
15 contact the victim's family?
16 **MS. SEAY:** Yes, sir. They are, uh, -- they
17 are just over at our office right now. I can get
18 them over here in just a matter of minutes.
19 **THE COURT:** Well, that will be fine. We can
20 go ahead and do this whole thing. All right.
21 **MS. SEAY:** Okay.
22 **THE COURT:** All right. We're at ease for
23 about 15 minutes.
24 (WHEREUPON, a recess is taken.)
25 **THE COURT:** All right. What do we have to

1 report, Mr. Johnson?

2 MR. JOHNSON: My client has agreed to plead.

3 THE COURT: All right. And he's pleading to
4 the lesser included?

5 MR. JOHNSON: Yes, sir, Your Honor.

6 THE COURT: All right. Is that the
7 recommendation?

8 MS. SEAY: That's correct, Your Honor.

9 THE COURT: Very well. We ready to proceed
10 by the State?

11 MS. SEAY: Yes, sir.

12 THE COURT: All right. Mr. Gosnell ---

13 MR. GOSNELL: Yes, sir.

14 THE COURT: --- it's my understanding you are
15 prepared now to enter a plea of guilty to the
16 offense of voluntary manslaughter, is that correct?

17 MR. GOSNELL: Yes, sir.

18 THE COURT: All right. Mr. Gosnell, before I
19 can accept your plea, I have to ask you some
20 questions. And the purpose of these questions is to
21 make sure that your plea is made freely and
22 voluntary. In that regard, let me again ask you if
23 you are represented by Mr. Johnson and Ms. Mitchell
24 who are here with you today, is that correct?

25 MR. GOSNELL: Yes, sir.

1 **THE COURT:** And have you had an opportunity
2 to discuss with Mr. Johnson and Ms. Mitchell the
3 difference between the charge of murder and the
4 charge of voluntary manslaughter?

5 **MR. GOSNELL:** Yes, sir.

6 **THE COURT:** And do you realize that for the
7 charge of murder, under the circumstances of this
8 case, you could have received life without parole.

9 **MR. GOSNELL:** Yes, sir.

10 **THE COURT:** And as to the charge of voluntary
11 manslaughter, it's my understanding that the
12 Solicitor is withdrawing a request for a sentence of
13 life without parole and the maximum that you would
14 be looking at would be 30 years. You understand?

15 **MR. GOSNELL:** Correct.

16 **THE COURT:** And you do understand the
17 difference between the two charges, that is, you are
18 familiar with what the two charges are?

19 **MR. GOSNELL:** Yes, sir.

20 **THE COURT:** Now, in your conversations with
21 Mr. Johnson and Ms. Mitchell, did they go over with
22 you the evidence in this case? I heard of things
23 like your statement and DNA and toxicology and
24 witnesses and things of that nature. Did they go
25 over those things with you and discuss with you how

1 that evidence might be used against you in a jury
2 trial?

3 **MR. GOSNELL:** Yes, sir.

4 **THE COURT:** And so there's no question that
5 they have discussed with you the fact that you do
6 have the absolute right to have a jury trial?

7 **MR. GOSNELL:** Yes, sir.

8 **THE COURT:** And in fact, we were about to
9 begin a jury trial. Is that not right?

10 **MR. GOSNELL:** Yes, sir.

11 **THE COURT:** Now, Mr. Gosnell, I want you to
12 understand that if you plead guilty, you are forever
13 waiving or giving up, forfeiting, saying I don't
14 want to have one, a jury trial. You understand
15 that?

16 **MR. GOSNELL:** Yes, sir.

17 **THE COURT:** And do you realize, sir, that
18 there are other considerations that go along with
19 your decision to waive the jury trial as to the
20 charge of voluntary manslaughter in that the state
21 is going to now dismiss the murder charge and any
22 other ancillary charges?

23 **MR. JOHNSON:** Burglary first.

24 **THE COURT:** Burglary first and the murder
25 charges are being dismissed. Do you understand

1 that?

2 **MR. GOSNELL:** Yes, sir.

3 **THE COURT:** Is that your understanding also,
4 Ms. Seay?

5 **MS. SEAY:** Yes, sir.

6 **THE COURT:** Now, Mr. Gosnell, whenever one
7 waives or gives up his right to a jury trial, that's
8 precisely what you do when you enter a plea of
9 guilty. But when you do that, do you understand
10 that you also give up many, many other rights. I'm
11 going to tell you right now there are so many other
12 rights that are associated with a jury trial that if
13 you and I spent the rest of the month just sitting
14 down and talking, we would probably not be able to
15 cover all the rights that are -- that go along with
16 or that are collateral to a jury trial.

17 Some of those rights that I'd like to point out
18 to you would be things like your right to remain
19 silent in a jury trial. No one could make you
20 testify. You certainly could if you wanted to. But
21 no one could make you do it. And if you decided
22 that you did not want to testify, I would tell the
23 jury that they could not use that against you in any
24 form or fashion. You understand?

25 **MR. GOSNELL:** Yes, sir.

Guilty Plea

1 **THE COURT:** You also have the right to be
2 represented by attorneys. Throughout that trial,
3 every phase of the trial, you'd have the right to
4 have an attorney represent you. You understand?

5 **MR. GOSNELL:** Yes, sir.

6 **THE COURT:** And you would have a right at the
7 end of the day to require the State to have to prove
8 to each and every juror that you were guilty beyond
9 a reasonable doubt. You understand that?

10 **MR. GOSNELL:** Yes, sir.

11 **THE COURT:** Again, those are rights that go
12 along with the jury trial. But I want you to
13 understand that if you enter a plea of guilty and
14 waive your basic or general right to a jury trial,
15 that you're giving up these and many other rights as
16 well. That just makes sense in a way, doesn't it?

17 **MR. GOSNELL:** Yes, sir.

18 **THE COURT:** Okay. Now, is that what you wish
19 to do?

20 **MR. GOSNELL:** Yes, sir.

21 **THE COURT:** Now, tell me about Ms. Mitchell
22 and Mr. Johnson. It's my understanding that you had
23 some disagreements with them. But I ask you,
24 generally, are you satisfied with their
25 representation?

1 **MR. GOSNELL:** Yes, sir.

2 **THE COURT:** All right, sir. Do you need any
3 more time with them right now?

4 **MR. GOSNELL:** No, sir.

5 **THE COURT:** Do you feel that they have given
6 you all of the advice that you need and answered all
7 the questions that you need answered?

8 **MR. GOSNELL:** Yes, sir.

9 **THE COURT:** Is there anything that I can tell
10 you now? Do you want to ask me anything? I can't
11 give you legal advice, but I'll be happy to answer
12 any questions you might have about this process,
13 this plea process.

14 **MR. GOSNELL:** No, sir.

15 **THE COURT:** All right, sir. Now, I thought I
16 heard you a moment again, Mr. Gosnell, say that you
17 are 48, is that right?

18 **MR. GOSNELL:** Yes, sir.

19 **THE COURT:** Are you married?

20 **MR. GOSNELL:** Yes, sir.

21 **THE COURT:** Do you have any children?

22 **MR. GOSNELL:** Yes, sir.

23 **THE COURT:** You do?

24 **MR. GOSNELL:** (Nods head.)

25 **THE COURT:** How many children do you have,

1 Mr. Gosnell?

2 MR. GOSNELL: I got one girl, three grand
3 girls.

4 THE COURT: I would assume then that your
5 daughter is probably over 18?

6 MR. GOSNELL: Yes, sir.

7 THE COURT: All right. So you don't have any
8 children at home?

9 MR. GOSNELL: No, sir.

10 THE COURT: Are you still with your wife?

11 MR. GOSNELL: No, sir.

12 THE COURT: Y'all are separated?

13 MR. GOSNELL: Yes, sir.

14 THE COURT: And how long have you been
15 separated?

16 MR. GOSNELL: About 11 years.

17 THE COURT: All right. Mr. Gosnell, how far
18 -- I believe I heard you say you went to the ninth
19 grade?

20 MR. GOSNELL: Yes, sir.

21 THE COURT: You look like a working man to
22 me, Mr. Gosnell. What kind of work do you do?

23 MR. GOSNELL: I work on cars and build
24 houses.

25 THE COURT: Okay. You are sort of a general

1 Jack of all trades.

2 MR. GOSNELL: Yes, sir.

3 THE COURT: You always work for yourself?

4 MR. GOSNELL: Yes, sir.

5 THE COURT: Okay. Now, --

6 MR. GOSNELL: Right out of high school, I
7 went to work, sir.

8 THE COURT: Mr. Gosnell, have you ever had
9 any mental health problems or have you had any
10 addiction issues that might keep you from
11 understanding what we're doing here today?

12 MR. GOSNELL: No, sir.

13 THE COURT: Have you taken any drugs or
14 alcohol in the last 24 hours?

15 MR. GOSNELL: No, sir.

16 THE COURT: Can you think, Mr. Gosnell, of
17 any reason why you would not fully and completely
18 understand what we're doing here today? By that, I
19 mean do you have any sort of physical or mental or
20 emotional problems going on today that might keep
21 you from understanding what we're doing?

22 MR. GOSNELL: No, sir.

23 THE COURT: All right. I want you to listen
24 very carefully as Ms. Seay tells us or tells me the
25 facts surrounding this particular charge.

1 **MS. SEAY:** Thank you, Your Honor. May it
2 please the Court. This incident occurred on
3 November 5th, 2010 in the early morning hours of
4 that date. On that date, this defendant borrowed a
5 Maglite type flashlight from a friend that he was
6 living with. And he then went over to the victim's
7 home.

8 The victim is 65-year-old Donald Page, Sr. He
9 went over to his home. He entered the front door,
10 which was opened. The victim was in his bedroom
11 with the door locked. The defendant proceeded to
12 pound on the victim's bedroom door telling him to
13 come out.

14 As it turns out, Your Honor, just by way of
15 background, there had been some previous
16 difficulties between the victim and the defendant
17 over a woman named Pamela Daniel which you've heard
18 some about. And the, uh, woman in question, Pamela
19 Daniel had previously been Mr. Gosnell's girlfriend
20 and was now living with the victim, Mr. Page. So
21 there had been some animosity, some jealousy there.

22 At some point, Mr. Gosnell either gained entry
23 to the bedroom or Mr. Page opened the door to the
24 bedroom. We don't know which. And Mr. Gosnell
25 proceeded to beat Mr. Page in the head with the

1 Maglite flashlight. And Mr. Page died as a result
2 of blunt force trauma to the head and excessive loss
3 of blood. He, also at autopsy, was found to have
4 multiple blunt force injuries to his head, to his
5 face. There was also injuries to his hands which
6 were consistent with defense type injuries.

7 The defendant, as you know, gave a statement to
8 law enforcement admitting that he did go over to the
9 victim's home, admitting that he did become involved
10 in an altercation with the victim and that he hit
11 the victim in the head with something. He wasn't
12 sure, but he said it could have been a flashlight.

13 And the, uh, evidence at trial, Your Honor,
14 would be that we would have presented, uh, the
15 various witnesses who were there in the home prior
16 to the actual killing. And we would presented DNA
17 evidence which would have shown the victim's blood
18 on the Maglite flashlight. And we also would have
19 presented evidence that showed the victim's blood
20 all over the defendant's coat. That would be the
21 evidence as it would have been presented at trial,
22 Your Honor. And this did occur in Greenville county
23 at [REDACTED].

24 **THE COURT:** And Mr. Gosnell, is that
25 essentially what occurred that you took his life

1 without malice?

2 MR. GOSNELL: Right.

3 THE COURT: Okay. All right. Mr. Gosnell,
4 anyone promise you anything to get you to plead
5 guilty?

6 MR. GOSNELL: No, sir.

7 THE COURT: Anyone threatened you or
8 intimidated you in any way to get you to plead
9 guilty?

10 MR. GOSNELL: No, sir.

11 THE COURT: Are you pleading guilty because
12 you are?

13 MR. GOSNELL: Yes, sir.

14 THE COURT: Mr. Gosnell, the ultimate
15 question that I'm called upon to answer here is
16 whether or not you are pleading freely and
17 voluntarily. Are you pleading freely and
18 voluntarily?

19 MR. GOSNELL: Yes, sir.

20 THE COURT: Have you had all the time you
21 need in your mind to think about this?

22 MR. GOSNELL: Yes, sir.

23 THE COURT: Do you believe that this is the
24 best way for you to end this matter?

25 MR. GOSNELL: Yes, sir.

1 **THE COURT:** You think it's in your best
2 interest?

3 **MR. GOSNELL:** Yes, sir.

4 **THE COURT:** Now, have you been truthful with
5 me in your responses to my questions?

6 **MR. GOSNELL:** Yes, sir.

7 **THE COURT:** All right. Mr. Gosnell, you
8 have, uh, 10 days in which to file notice of intent
9 to appeal what I do here today. If you fail to do
10 that, you will have waived your right to appeal.
11 Most people don't understand that you can file an
12 appeal of a plea. Usually it's only to the sentence
13 that the judge gives. But there is a such thing as
14 a plea to -- as an appeal to a guilty plea. I'm
15 sure that you wouldn't know how or where to do it,
16 but Mr. Johnson would. Right, Mr. Johnson?

17 **MR. JOHNSON:** Yes, sir, Your Honor.

18 **THE COURT:** All right. You understand that?

19 **MR. GOSNELL:** Yes, sir.

20 **THE COURT:** All right. Mr. Gosnell, I find
21 that there is a substantial factual basis for this
22 plea. This plea is made freely, voluntarily,
23 knowingly and intelligently and with the advice of a
24 very competent attorney who Mr. Gosnell tells me he
25 is satisfied. I will accept Mr. Gosnell's plea.

1 Now, it's been my practice, Ms. Seay, to hear
2 from the victims first. Then I'll allow Mr. Johnson
3 to respond.

4 **MR. JOHNSON:** Thank you, Your Honor.

5 **MS. SEAY:** Your Honor, there are two brothers
6 of Mr. Page who are present here today. I'm not
7 sure if they wish to address the Court. I will ask
8 our victim advocate to inquire of them.

9 **VICTIM ADVOCATE:** No, Your Honor. They do not
10 wish to address the Court.

11 **THE COURT:** All right. I'll just acknowledge
12 that they are here then. All right. All right, Mr.
13 Johnson.

14 **MR. JOHNSON:** Thank you, Your Honor. The
15 first thing I would like to say, as my client said
16 when the Solicitor was portraying the State's
17 version of the facts, uh, that from the get-go when
18 me and my client discussed this, we believed this
19 was likely a manslaughter rather than a murder case.
20 That would have always been the appropriate charge.
21 The only reason why we're here today is primarily
22 because of sentence. That was something that he
23 felt in his heart that he didn't go over there
24 meaning to kill that man. He felt in his heart
25 that's not what he went over there to do. But what

1 happened, happened in a heat of passion. He wanted
2 the Court to know that.

3 It was just trying to explain to him what the
4 case law was. That's something that we've gone over
5 many, many times. That's -- he's here today taking
6 responsibility for what has taken place. I just
7 first wanted to kind of tell you why we are here and
8 what my client would say about what happened. It
9 was an argument that led to a fight that led to my
10 client killing Mr. Page.

11 As far as my client is concerned, one of the
12 things he left out I was trying to encourage him to
13 say was when he dropped out of high school, he
14 wasn't just a drop out. He went to work. He went
15 to work in a mill. He tells me that he (inaudible)?
16 Say it?

17 **MR. GOSNELL:** (Inaudible).

18 **MR. JOHNSON:** You know what that is, judge?
19 Sorry. For some odd reason, I can't even pronounce
20 it. I just wanted you to know that my client, he's
21 always been a working man. He has an aunt and uncle
22 that speaks very highly of him. He works on cars.
23 He likes to work on foreign cars cause he feels that
24 they are a challenge for him. American cars and
25 other cars are easy for him. So he's very skilled

Guilty Plea

1 as far as that's concerned.

2 He also talked about houses. At the time of
3 this incident, he was employed. He was employed
4 building a deck for -- I can't remember his name.
5 He was building a deck for a guy. It wasn't as if
6 he was ripping and running the streets. I just
7 wanted to shed that positive image of my client,
8 Your Honor, so you can hear that.

9 At this point in time, we ask for the mercy of
10 the court. I don't know if it had been portrayed to
11 the Court or not, at one point, there was an offer
12 of 15. We reached some difficulties with having
13 that plea actually go through. We would ask if Your
14 Honor would reconsider it.

15 I would like to communicate something to the
16 court that was very important in light of
17 understanding my client's decline in the case.
18 There was an inmate in jail who wrote many letters
19 on Mr. Gosnell's behalf. That's why when you asked
20 him what the motions and things were, he did not
21 know. This other young man would write it for him
22 and had been basically acting as a jailhouse lawyer
23 telling him that I didn't know what I was doing and
24 things of that nature. Mr. Gosnell would confirm
25 that for you. I have since resolved that problem.

1 It was a problem.

2 I do think that my client is easily influenced
3 sometimes. I only can imagine what certain jailhouse
4 lawyers tell you what they've done or what they can
5 do. That's a big factor here today. I think that's
6 revealed when you heard what he had to say right
7 before we got started with the proceedings and
8 documents and things. He doesn't read and write
9 that well. He can read and write some. Some of the
10 Brady motions and stuff, he just doesn't know what
11 they are. Someone told him to do it and that would
12 help him. That's why that's taken place.

13 In any case, Your Honor, we ask for the mercy
14 of the Court at this time. We understand what he
15 has done despite the mitigating factors, it's still
16 a very serious crime. But we also like to take into
17 account the victim's record that was portrayed to
18 the Court. If we were not a court of law, then we'd
19 have those types of rules and things where you say
20 okay there's two guys fighting. Unfortunately, the
21 result was someone is dead. We just ask for the
22 mercy of the Court at this time.

23 **THE COURT:** Madam Solicitor, as I recall when
24 we began today, there were three rather minor
25 charges that were on Mr. Gosnell's record, I

1 believe. What were they again?

2 MS. SEAY: Petty Larceny, Possession of Crack
3 Cocaine and Giving False Information.

4 THE COURT: False Information. That's right.

5 MS. SEAY: But that is not the extent of his
6 record.

7 THE COURT: Okay.

8 MS. SEAY: Would you like to hear his entire
9 record?

10 THE COURT: Yes. And when were those?

11 MS. SEAY: The Petty Larceny was 2006, as
12 well as, the Possession of Crack Cocaine and the
13 False Information was in 2009.

14 THE COURT: Okay. All right. What else?

15 MS. SEAY: In 1986, he was convicted of
16 Assault and Battery with Intent to Kill, Failure to
17 Appear, two counts, and No State Driver's License.
18 In 1990, he was convicted of Criminal Domestic
19 Violence, Open Container and Driving Under
20 Suspension, two counts. In 1991, he had a Burglary
21 second degree and Probation Revocation. In 1998, a
22 Shoplifting and a Petty Larceny. And then along
23 with the Petty Larceny and Possession of Crack
24 Cocaine in 2006, there was a Possession of Drug
25 Paraphernalia. In 2008, Habitual Traffic Offender.

1 And in 2009, in addition to the False Information, a
2 Driving Under Suspension, Operating Uninsured
3 Vehicle and an Improper Vehicle License.

4 **THE COURT:** Okay. Mr. Gosnell, do you want
5 to tell me anything other than what you already told
6 me?

7 **MR. GOSNELL:** Yes, sir. I didn't
8 intentionally kill that man. I sent one of my
9 friends there to check on him and see if he was
10 alive if you take that in consideration. I did turn
11 myself in.

12 **THE COURT:** And you did give a confession.
13 All right. This is a very sad situation, Mr.
14 Gosnell. I would think that probably no ill-will,
15 but your emotions got the better of you concerning
16 this woman. You did something that you normally
17 would not have done. We all find ourselves here in
18 a very regrettable tragic situation, very tragic for
19 this victim's family and his friends. They have
20 suffered his loss. Now your friends will also
21 suffer your loss for a substantial period of time.
22 The sentence of the Court is you be confined to the
23 State Department of Corrections for a period of 17
24 and one half years. Thank you.

25 **MR. JOHNSON:** Thank you, Your Honor.

1 **MS. SEAY:** Thank you, Your Honor.

2

3 **(WHEREUPON,** the proceedings conclude at
4 approximately 1:28 p.m.)

5

6

7

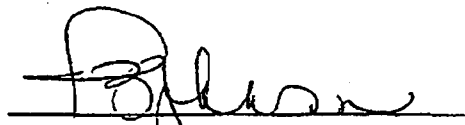
8

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 3rd day of January, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

A handwritten signature in dark ink, appearing to read 'T. B. Johnson', is written over a horizontal line.

Teresa B. Johnson

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of GREENVILLE)Gregory Gasnell, 135877)

Full name and prison number (if any) of Applicant)

v.)

2013-CP-23- 00057

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
GREENVILLE, S.C.
2013 JAN -4 AM 11:38INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Dept. Corrections - Lieber Corr.
Inst. 136 Wilborn Ave., Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Greenville County Court
of General Sessions Greenville, S.C.; The Hon. Larry B. Hill - judge
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-23-08334 - Murder
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 10, 2012
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
I wrote attorney and requested that he appeal sentence
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. X
- ii. X
- iii. X
- (b) the result in each such Court to which you appealed:
- i. X
- ii. X
- iii. X
- (c) the date of each such result:
- i. X
- ii. X
- iii. X
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. X
- ii. X
- iii. X
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I requested that attorney file an appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial/Plea Counsel
- (b) Applicant is a Mental Health Patient
- (c) see: Attached sheet
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective Assistance / Involuntary Plea
- (b) Applicant is a Mental Health Patient
- (c) see: Attached sheet
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

Page 3 (a)

Applicant set forth this cause of action pursuant to the Jurisdiction that are set forth in 17-27-20(1)(b) "Collateral attack upon and ground of alleged error heretofore available under this uniform Post Conviction Act, that are being submitted or amended."

Applicant asserts ineffective assistance of trial Counsel in this application. Due to the lack of records and the assistance of Counsel. Pursuant to SCRCiv. P. Rule 71.1(d)(e), states that the burden of proof is on the Applicant to show his entitlement for relief by a preponderance of the evidence and also for the appointment of Counsel for the hearing, to insure that all available grounds for relief are included in the application and shall be amended if necessary. It would be chronologically impossible for the Applicant to carry such a burden without the aid of the whole Lower Court records and the appointment of Counsel to help establish his Constitutional Claims.

The Applicant request that this Court order the state to turn over all the Lower Court records pertaining to this conviction and order that Counsel be appointed in the above mention application. Applicant further request that this Court grant leave to amend the present Application in this cause of action due to the lack of records and Applicant is without Counsel.

Applicant seeks this Court approval of this application, so that Applicant right to a PCR won't be deem abandon due to the fact that Applicant has only one (1) year to file this Application from the date of a final Judgment or from the remittitur to the Lower Court, whichever come first.

Page 3 (a)

(c) the disposition thereof:

- i. ~~_____~~
- ii. ~~_____~~
- iii. ~~_____~~
- iv. ~~_____~~

(d) the date of each such disposition:

- i. ~~_____~~
- ii. ~~_____~~
- iii. ~~_____~~
- iv. ~~_____~~

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. ~~_____~~
- ii. ~~_____~~
- iii. ~~_____~~
- iv. ~~_____~~

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. ~~_____~~
- ii. ~~_____~~
- iii. ~~_____~~

(b) the proceedings in which each ground was raised:

- i. ~~_____~~
- ii. ~~_____~~
- iii. ~~_____~~

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Requested that appeal be filed
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Briga P. Johnson - Public Defender
Greenville County Courthouse, 305 E. North St, Suite 123
 ii. Greenville, S.C. 29601
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. arraignment and plea
 ii. entering of guilty plea and sentencing
 iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Sentence and Remand for New Trial

see: Attached Sheet

Conviction is in violation of Hill v. Lockhart/Strickland Washington

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, Gregory E. Gosnell #135877, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Greg E Gosnell

SWORN to and subscribed before me this 20th
day of December, 2012.

Ludiecar Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Gosnell Gregory E. Gosnell #135877, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gosnell Gregory E. Gosnell
Applicant

SWORN or affirmed to and subscribed before me this
20th day of December, 2012.

Leandro Bryant
Notary Public

My Commission Expires: May 26, 2020

Gregory Gosnell #135877
 Ueber Corn. Inst.
~~36~~ Wilborn Ave.
 E-B-30
 Ridgewille S.C.
 29472

RECEIVED

DEC 20 2012
 MAIL ROOM
 UEBER C.I.

13-5X

POSTAGE
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 DEC 20 2012
 FROM ZIP CODE 29472



PAUL B. Wickensimer
 Greenville County Clerk of Court
 305 East North Street

Greenville, S.C. 29601
 2560132130

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-0057
COUNTY OF GREENVILLE	)	
	)	
Gregory Gosnell,	)	
S.C.D.C. No. 135877,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed January 4, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2011 term of the Greenville County Grand Jury for murder (2011-CP-23-8334). Brian P. Johnson, Esquire, represented the Applicant.

On September 10, 2012, the Applicant pled guilty to voluntary manslaughter. The Honorable Larry B. Hyman, Jr. sentenced the Applicant to seventeen and a half (17.5) years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief the Applicant alleges he is being held in

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Applicant is a mental health patient."
2. Involuntary guilty plea.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at

2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal

cases.” Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers. Id. Moreover, a criminal defendant entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant’s plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the

record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue.

See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held
and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

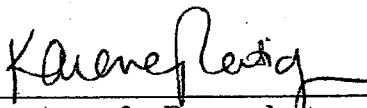
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

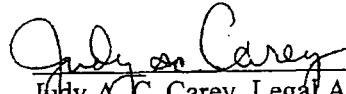
May 7, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2013-CP-23-0057
	)	
GREGORY GOSNELL, 135877	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Gregory Gosnell, 135877
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472**

DATED this 7th day of May, 2013.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

GREGORY GOSNELL,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2013-CP-23-00057

FEBRUARY 21, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

CAROLINE HORLBECK, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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Gregory Gosnell -vs- State of South Carolina (2013-CP-23-00057)
Exhibit List

3

PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	E
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		
COURT'S EXHIBITS			
	(NONE)		

1 **FEBRUARY 21, 2014**

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 THE COURT: All right. Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor. May it
6 please the court. This is the case of Gregory Gosnell
7 versus the State of South Carolina. The docket number
8 is 2013-CP-23-00057. Mr. Gosnell was indicted for
9 murder. He was represented on that charge by Mr.
10 Johnson.

11 September 10th of 2012, he pled guilty to the
12 reduced charge of voluntary manslaughter. Your Honor,
13 I would note the case had actually been called to
14 trial. The plea actually starts on page seventy-eight
15 of the transcript that the prior pages were motions
16 hearings and a *Jackson v. Denno*. But he did plead
17 guilty to voluntary manslaughter on September 10th,
18 2012. Judge Hyman sentenced him to seventeen and a
19 half years imprisonment. He did not file an appeal.
20 The state is ready to proceed. I would note for Your
21 Honor's information and also for the record, the
22 gentleman sitting on the front row right here is the
23 victim's brother. He is here to observe the
24 proceedings today.

25 THE COURT: Ms. Horlbeck.

1 MS. HORLBECK: Judge, at this point, Mr.
2 Gosnell did ask me to make some motions. I've got two
3 motions for funding for DNA testing and also to hire an
4 expert to conduct further exploration into the findings
5 or the cause of death that was determined at the
6 autopsy.

7 Judge, just let me provide a little bit of
8 background. This is a case that involved a fight or an
9 altercation between Mr. Gosnell and the victim. Prior
10 to trial the defense stipulated that Mr. Gosnell did
11 not sustain any injuries to his chest. There was --
12 the victim's blood was found on a flashlight that had
13 been -- or the facts are that the victim's blood had
14 been found on a flashlight that had been borrowed by
15 Mr. Gosnell. And the victim's blood was also found on
16 Mr. Gosnell's jacket.

17 Now, there were a number of swabs of blood that
18 were taken. There were four swabs of blood taken from
19 Mr. Gosnell's coat and also a swab of blood taken from
20 the lens of the flashlight, the switch of the
21 flashlight. Tests showed that the victim was
22 definitely the source of the DNA on those items.

23 However, there's one swab of blood that was taken
24 from Mr. Gosnell's coat that showed the major
25 contributor was the victim, but there was also a minor

1 contributor that was unknown.

2 There were six swabs of blood that were not
3 tested. There's a swab from the inside of the front
4 door, a swab from the living room ceiling, swabs from
5 the front bedroom wall above the headboard, a swab from
6 the bedroom front wall, and a swab from the exterior
7 rear door that Mr. Gosnell would like tested.

8 Now, in Mr. Gosnell's statement, he indicated it
9 seems that only Mr. Gosnell and the victim were
10 involved in the fight. I don't know -- you know, also
11 there's another swab from the victim's bedroom floor
12 that he wanted tested.

13 Judge, at this -- I don't believe there are any
14 co-defendants. I don't believe DNA was collected from
15 any of the witnesses. And he wants the DNA compared
16 to Pam Daniel, a witness, and Kendall Morris and
17 another witness. They're not co-defendants. They
18 weren't arrested. There was no DNA extracted from them
19 or no samples taken from them.

20 I explained to him I don't -- I think it would be
21 difficult to do, but I told him I would make the
22 motion.

23 Additionally, the motion for an expert to do
24 further testing or further inquiry into the autopsy. I
25 guess the autopsy, it's fair to say that would have

1 been quite some time ago. I don't know the condition
2 of the victim's body. It sounds like -- I don't know
3 what would have to be done to -- or what further
4 inquiries would be made by an expert. However, we are
5 making that motion for funding in that case, Judge.

6 Mr. Gosnell may have a few things to say. And
7 just depending on Your Honor's ruling, if Your Honor
8 rules against us, we are prepared to go forward.

9 THE COURT: So there was no autopsy made
10 before the ---

11 MS. HORLBECK: There was, yes, by Dr. Ward.
12 And he wrote a report and there were findings.

13 THE COURT: Okay. He wants a second opinion?

14 MS. RATIGAN: He does.

15 MS. RATIGAN: And Your Honor, the state would
16 object to both motions regarding the DNA testing --
17 well, actually regarding both of these matters. Mr.
18 Gosnell gave a statement that was found to be
19 voluntarily given by Judge Hyman. He entered a very
20 clear guilty plea. The judge went through all of the
21 factors of the usual guilty plea where he admitted his
22 guilt. He stated he had not been coerced in anyway.
23 He stated he had been giving truthful answers. He
24 received -- the state withdrew their notice of intent
25 to seek life without parole. He pled to the reduced

Gregory Gosnell -vs- State of South Carolina (2013-CP-23-00057)
PCR Hearing

8

1 charge of involuntary manslaughter. They dismissed the
2 first degree burglary charge. All of this was done in
3 exchange for his knowing and voluntary plea, which was,
4 in fact, knowing and voluntary.

5 The DNA testing seems to me to be to be a fishing
6 expedition. Testing -- he admitted his guilt. He
7 admitted to going over to the victim's house and
8 beating him with a flashlight. And the victim
9 ultimately died as a result of those injuries. Testing
10 various swabs from throughout the house with various
11 state witnesses; really, I don't understand the purpose
12 of that. Again, it seems to be a fishing expedition,
13 when he has so clearly admitted his guilt.

14 And as for the autopsy, again, Mr. Johnson can
15 testify to the findings of the original autopsy report.
16 I don't believe a showing has been made today that a
17 second autopsy or even a review of the first autopsy
18 would be warranted, given the fact that he did, in
19 fact, plead guilty.

20 THE COURT: Ms. Horlbeck, wouldn't those
21 motions be most appropriate after I rule in your
22 client's favor? I mean, if I remand it back for a new
23 trial, wouldn't that be -- rather than at this stage?
24 I just don't understand how that, how that would change
25 the plea? It wasn't at a trial that that was not

1 presented.

2 MS. HORLBECK: I think what my client is
3 trying to say, Judge, is that this was a plea that was
4 obtained as a result of ineffective assistance of
5 counsel. And since these things were not done by
6 counsel, he feels like he had no other choice but plead
7 guilty.

8 I don't want to concede any ground. I just
9 certainly went over these issues with my client
10 extensively. Not only today, but I have had contact
11 with him back in the fall and since then regarding this
12 issue. And these are issues that he feels extremely
13 strongly about and I told him that I would present them
14 ---

15 THE COURT: I certainly will protect him for
16 the record, but I respectfully deny both motions.

17 MS. HORLBECK: Thank you, Judge.

18 THE COURT: Y'all ready to proceed? Or does
19 he have something he wishes to say?

20 MS. HORLBECK: No, sir. That's up to Your
21 Honor.

22 THE COURT: Well, I thought you said
23 something about he had ...

24 MS. HORLBECK: If Your Honor would ---

25 THE COURT: Call your first witness.

1 MS. HORLBECK: Judge, we would call Mr.

2 Gosnell.

3 THE CLERK: Mr. Gosnell, please place your
4 left hand on the bible and raise your right hand, best
5 you can.

6 You do solemnly swear or affirm that the testimony
7 you're about to give in this case will be the truth,
8 the whole truth and nothing but the truth, so help you
9 God?

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Thank you. You may be seated.
12 Please state your full name for the record.

13 THE WITNESS: Gregory Harold Gosnell.

14 GREGORY HAROLD GOSNELL,

15 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MS. HORLBECK:

18 Q. Mr. Gosnell, who represented you on this charge?

19 A. Brian P. Johnson.

20 Q. Was he appointed or was he retained?

21 A. He was appointed.

22 Q. How long did he represent you?

23 A. Twenty-two months.

24 Q. All right. And you ultimately pled guilty to a
25 reduced charge of manslaughter; is that correct?

- 1 A. Yes, ma'am. Off of his advice.
- 2 Q. And the sentence that you got was seventeen and a
3 half years?
- 4 A. Yes, ma'am.
- 5 Q. Okay. And as a result of that guilty plea, you
6 filed this petition for post conviction relief; is that
7 correct?
- 8 A. Yes, ma'am.
- 9 Q. Okay. All right. Now, while Mr. Johnson was
10 representing you, did you have the opportunity to be
11 released on bond or were you down at the jail?
- 12 A. I was down at the jail.
- 13 Q. The entire time?
- 14 A. I never got -- went up for a bond.
- 15 Q. Okay. Did Mr. Johnson come down to the jail to
16 visit you and discuss this case with you?
- 17 A. Several times. But we got into it because he
18 wouldn't give me my evidence.
- 19 Q. He wouldn't what?
- 20 A. He wouldn't give me all my evidence.
- 21 Q. Oh, okay. All right. So you said that he
22 visited you several times?
- 23 A. Yes, ma'am.
- 24 Q. During the several times that he visited you, did
25 he review the evidence and the discovery with you?

Gregory Gosnell -vs- State of South Carolina (2013-CP-23-00057)
Gregory Gosnell - Direct Examination by Ms. Horlbeck

12

1 A. Some of it. We never went over all of it.

2 Q. Okay. Now, do you recall -- prior to the trial,
3 do you recall making the same motion in front of Judge
4 Hyman that Mr. Johnson had not provided you discovery?

5 A. Yes, ma'am.

6 Q. Okay.

7 A. I told him I wanted to fire him because of he
8 would not do any investigation in my trial.

9 Q. All right. Let's just focus on the discovery.
10 Do you recall Mr. Johnson explaining to the court that
11 he had provided you discovery and that somehow it had
12 gotten stolen from you?

13 A. What he done, he give me part of my discovery.
14 And when they shut down when I was in S&T, they got my
15 discovery and never give it back to me. I told him it
16 got missing.

17 Q. All right. Do you recall signing a document
18 saying that you had received discovery?

19 A. No, ma'am.

20 Q. All right. Do you recall Mr. Johnson saying
21 prior to trial or telling the judge prior to trial that
22 you had signed a document indicating that you had
23 received discovery?

24 A. I don't remember.

25 Q. All right. But ultimately your complaint is that

- 1 your discovery got stolen from you at the jail?
- 2 A. Well, it got took. I ain't saying it got stole.
- 3 They come in at shutdown. They got my roommate's
- 4 property and my property. And they brought his
- 5 property back and never brought mine back.
- 6 Q. Okay. So whatever happened to it, you didn't
- 7 have possession of your discovery packet?
- 8 A. No, ma'am.
- 9 Q. Okay. Did you request a second copy?
- 10 A. Yes, ma'am. I wrote Brian a letter and he wrote
- 11 me a letter back saying that he would get my stuff as
- 12 quick as possible sent to me and I never got it.
- 13 Q. Okay. Was a second copy of discovery ever
- 14 provided to you?
- 15 A. No, ma'am.
- 16 Q. Okay. All right. And you brought some of these
- 17 -- I know you brought the discovery issue to Judge
- 18 Hyman's attention. As a result of that motion did Mr.
- 19 Johnson provide you a full copy -- a full second copy
- 20 of discovery?
- 21 A. No, ma'am.
- 22 Q. Okay. All right. And that's one of the
- 23 complaints you have today, is that even though you lost
- 24 it, Mr. -- or even though the discovery went missing
- 25 that you should have been provided a second copy?

1 A. Yes, ma'am.

2 Q. Okay. All right. And how do you think that, how
3 do you think that that amounted to failure to give you
4 reasonably effective assistance and how did it
5 prejudice your chances at trial?

6 A. Well, he never would file no motions for me. And
7 he always told me about the nature of the ---

8 Q. Let's just focus on the discovery. How did not
9 having that second copy prejudice your chance when you
10 ---

11 A. Because I can't go over all my issues.

12 Q. Okay. What issues did you -- were in that second
13 copy of discovery that you didn't have that would have
14 helped your case?

15 A. I don't know. I ain't never got it. I can't go
16 over everything if I ain't seen it.

17 Q. That's a good answer actually. All right. So
18 you're not quite sure -- you're saying you probably
19 missed some issues because your discovery got taken
20 from you?

21 A. Yes, ma'am.

22 Q. All right. And offhand you can't tell us what
23 issues you think you may have missed?

24 A. No, ma'am.

25 Q. All right. You also allege that Mr. Johnson

- 1 didn't file motions for you?
- 2 A. Yes, ma'am.
- 3 Q. Okay. What would those motions be?
- 4 A. I filed a *Brady* motion about all my evidence and
- 5 I filed two other motions about evidence.
- 6 Q. Okay. Do you recall discussing with Judge Hyman
- 7 the *Brady* motion issue?
- 8 A. I can't remember. I don't know if we discussed
- 9 it or not.
- 10 Q. Okay.
- 11 A. I told him it got gone.
- 12 Q. Do you recall -- we're just talking about the
- 13 filing of motions; okay?
- 14 A. Uh-huh (affirmative).
- 15 Q. Do you recall Mr. Johnson telling the court that
- 16 he had filed *Brady*?
- 17 A. No. Mr. Johnson never said nothing about it.
- 18 Q. Okay. Do you recall the solicitor confirming
- 19 that a *Brady* motion had been filed?
- 20 A. I can't remember.
- 21 Q. Okay. All right. And are you also saying that a
- 22 Rule 6 chain of custody motion was not filed?
- 23 A. Yes, ma'am.
- 24 Q. And I think you also allege that Rule 5 motion --
- 25 the Rule 5 motion was not filed?

1 A. And the Brady motion.

2 Q. Okay. Do you recall prior to trial that Mr.
3 Johnson told the court that those motions had been
4 filed?

5 A. I can't remember if he told them or not.

6 Q. Okay. All right. Do you recall whether or not
7 the solicitor informed the court that those motions had
8 been filed?

9 A. No. He hadn't filed them.

10 Q. All right. Okay. And you also allege some Brady
11 issues; correct?

12 A. Yes, ma'am.

13 Q. All right. What -- I think you alleged in your
14 petition that a toxicology report had not been provided
15 to you?

16 A. Yes, ma'am.

17 Q. All right. Was that report -- was a duplicate of
18 that report provided to you prior to trial?

19 A. Right when we was coming to trial they give me a
20 copy of the autopsy and the toxicology was in it on the
21 back page.

22 Q. Okay. All right. What other issues regarding
23 Mr. Johnson's representation do you have today?

24 A. He should have got an expert witness to do the
25 autopsy, because all they got in the autopsy was

- 1 lacerations, abrasions and contusions.
- 2 Q. Okay.
- 3 A. And there's no trauma to the brain in the
- 4 autopsy.
- 5 Q. Okay.
- 6 A. To me, lacerations, abrasions and contusions
- 7 ain't nothing but cuts, scraps and bruises. That's not
- 8 blunt force trauma.
- 9 Q. Okay. All right. Let me just back up a little
- 10 bit. Did you review the coroner's report with Mr.
- 11 Johnson?
- 12 A. No. He never went over it with me. He told me
- 13 that there was signs of blunt force trauma.
- 14 Q. How do you know that the coroner's or the autopsy
- 15 report only shows contusions and abrasions?
- 16 A. That all I got -- I got a copy of it.
- 17 Q. Oh, you have a copy of it?
- 18 A. They gave it to me the day of trial.
- 19 Q. Okay. All right. Do you recall that the cause
- 20 of death that the expert, Dr. Ward, found that the
- 21 cause of death was blunt force trauma?
- 22 A. That's what he said on it.
- 23 Q. Okay. All right. But are you saying that
- 24 because there were only bruises and abrasions that that
- 25 cause of death was incorrect?

1 A. That's what I'm saying. That's what I looked up.

2 Q. All right. Did you discuss any of that with Mr.

3 Johnson?

4 A. No. He never discussed none of that with me.

5 Q. Why didn't you discuss any of that with him?

6 A. I don't know. I didn't know what it meant at the
7 time. He never discussed it with me. He said there
8 was signs of blunt force trauma.

9 Q. When you say that you didn't discuss it with him
10 and that you didn't know, was that because you didn't
11 have a copy of the ---

12 A. Autopsy.

13 Q. --- of the autopsy report?

14 A. (Affirmative nod.)

15 Q. Okay. Do you recall that the autopsy report also
16 listed coronary vascular disease as a contributing
17 factor?

18 A. I didn't know that -- I didn't finish high
19 school. I don't have a very good education. I
20 couldn't read them words.

21 Q. Okay.

22 A. So I didn't know what they meant.

23 Q. All right. But after you went to prison, after
24 you pled guilty, did you realize that that -- that
25 heard disease was a contributing factor?

- 1 A. Yes, ma'am.
- 2 Q. Did you discuss that with Mr. Johnson?
- 3 A. No, ma'am.
- 4 Q. Did you -- looking back, if you had known these
5 things, would you have requested that Mr. Johnson do
6 anything? You mentioned an expert. What did you want
7 him to do?
- 8 A. I wanted him to order the autopsy. He should
9 have had an expert witness at trial to went over the
10 autopsy.
- 11 Q. Okay. And did Mr. Johnson discuss with you the
12 strategy of employing an expert to review the autopsy?
- 13 A. No, ma'am.
- 14 Q. And review the accuracy of the cause of death?
- 15 A. No, ma'am.
- 16 Q. Okay. How do you think that that failure
17 prejudiced your case?
- 18 A. Well, it probably would have had a different
19 outcome of it.
- 20 Q. And in what way? How do you think the outcome
21 would have been different?
- 22 A. I think it would have been different at trial;
23 when we went on to trial.
- 24 Q. Okay. All right. What else did you want Mr.
25 Johnson to do that he didn't do?

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1 A. Well, I wanted him to call witnesses on my behalf
2 that he wouldn't call. I had a witness that was
3 willing to talk to him that knowed more about my case
4 than I did. And ---

5 Q. What witness is that?

6 A. Jeffrey Tomco.

7 Q. Okay.

8 A. I called Brian in his office and his investigator
9 and give them his name. And he said, well, I'll check
10 into it. Well, I called back like a month later and
11 she told me the guy didn't even exist. So luckily he
12 got locked back up and I got a statement from him.

13 Q. What did the statement say?

14 A. He was just saying that he went and picked Pam
15 and Kendall up at the motel of that day when they found
16 Donnie dead. I never knowed they went to the motel.
17 They never said in their statement they went to a
18 motel. And he knowed where that -- he didn't write in
19 his statement, but he told me that he knowed where Pam
20 and Kendall throwed Donnie's phone and wallet.

21 Q. Okay. So he had information about the victim's
22 wallet and his phone?

23 A. Yeah.

24 Q. Okay. All right. And you also wrote a statement
25 to police; correct?

- 1 A. Yes, ma'am.
- 2 Q. Okay. And what was your defense that you wanted
3 to present at trial?
- 4 A. My defense was that Donnie come at me with a
5 knife.
- 6 Q. Okay.
- 7 A. And Brian told me that they found two knives, but
8 he only showed me a picture of one.
- 9 Q. Okay. So there were two knives?
- 10 A. That's what Brian told me, there was a picture of
11 two knives. But he only showed me a picture of one of
12 them.
- 13 Q. Okay. All right. To your knowledge were those
14 knives ever tested for DNA?
- 15 A. They never was tested for nothing.
- 16 Q. Okay. Do you know where the knives were found?
- 17 A. No, ma'am. I know one was found -- I think was
18 under the couch he showed me a picture of, under a
19 cushion of a couch. But he never told me where the
20 other one was found or never showed me nothing about
21 it.
- 22 Q. Do you know if there's any evidence directly
23 linking those knives to Mr. -- to this case or this
24 incident?
- 25 A. Yeah.

- 1 Q. How? What evidence?
- 2 A. They was at his house, you know.
- 3 Q. So the knives were present at the victim's house?
- 4 A. Yes.
- 5 Q. But they were never tested for DNA or anything
- 6 like that?
- 7 A. Never tested for DNA or nothing.
- 8 Q. Did you want -- do you know whether blood was
- 9 found on those knives?
- 10 A. I don't even know.
- 11 Q. All right. And did you want Mr. -- what did you
- 12 want Mr. Johnson to do regarding those knives?
- 13 A. He should have had them tested to see if there
- 14 was blood on them, to see if there was Donnie's blood
- 15 on them.
- 16 Q. Okay.
- 17 A. There was a -- when me and Donnie got in a fight
- 18 he didn't even have a shirt on. And the autopsy report
- 19 shows that he had a shirt on -- I can't remember what
- 20 it said. But that he had a shirt on.
- 21 Q. Okay. What else -- what other allegations do you
- 22 have?
- 23 A. That he just -- he never told me about the
- 24 elements of the charges, that all evidence had to be
- 25 proven to a reasonable doubt. If I had knowed about

- 1 the evidence I would have insisted on going to trial.
- 2 Q. Okay. Had you ever been treated for mental
- 3 illness?
- 4 A. Yes, ma'am.
- 5 Q. Where?
- 6 A. At Lieber.
- 7 Q. Okay. Did you have a private doctor on the
- 8 outside that treated you?
- 9 A. I seen a private doctor one time for my nerves.
- 10 Q. Who was that?
- 11 A. Dr. -- he was in Travelers Rest -- Patel.
- 12 Q. Did you, did you -- were you treated for mental
- 13 illness at one of the county facilities?
- 14 A. In Greenville County? No.
- 15 Q. Any county?
- 16 A. At Greenville County, one time, at Mental Health.
- 17 Q. Okay. Just one appointment?
- 18 A. Yeah, I just went to see them once.
- 19 Q. What was your diagnosis, if you recall?
- 20 A. I was schizoid para -- whatever you call it.
- 21 Q. Were you on any medication at the time?
- 22 A. I was on medication when they diagnosed me with
- 23 it.
- 24 Q. Okay. All right. Did you discuss all that with
- 25 Mr. Johnson?

- 1 A. No, ma'am.
- 2 Q. Okay. All right. Did you ask Mr. Johnson to
3 file an appeal on this matter?
- 4 A. Yes, ma'am. I wrote him a letter after I got my
5 sentence and told him to file an appeal. Because Hyman
6 told me -- the judge that sentence me -- he told him if
7 I wanted an appeal I had ten days to do it. Just tell
8 my lawyer. Then when I went back to the county jail,
9 they put in a chute, I had no chance to use a phone or
10 call anybody. Then went I got to Kirkland R&E, they
11 didn't have no file there. So ten days was coming up,
12 so I wrote him a letter and told him to file every
13 motion that was possible to appeal it.
- 14 Q. Okay. To your knowledge were there any
15 appealable issues from the guilty plea?
- 16 A. No. I got scared into a plea.
- 17 Q. Okay. All right. Well, let's talk about that
18 then. Do you recall stopping the trial to tell Judge
19 Hyman that you wanted to plead guilty; right?
- 20 A. Yeah.
- 21 Q. All right. Well, who made that decision to stop
22 the trial?
- 23 A. Brian told me if I didn't plead guilty I was
24 going to get life imprisonment.
- 25 Q. When did Mr. Johnson tell you that?

- 1 A. The day we was going to trial.
- 2 Q. All right. Did he tell you that -- did he advise
3 you that or was he threatening you? I mean ---
- 4 A. He just told me if I didn't plead guilty to
5 voluntary manslaughter I was going to get life in
6 prison without parole.
- 7 Q. All right. Did he tell you that you faced up to
8 life in prison if you were convicted; is that what he
9 said?
- 10 A. Something like that.
- 11 Q. Okay. All right. Now, what made you stop the
12 trial and decide to plead guilty?
- 13 A. Because I got scared.
- 14 Q. What made you scared?
- 15 A. That when he told me I was going to get life in
16 prison without parole if I didn't plead guilty. So I
17 stood up and said, I want to plead guilty.
- 18 Q. Okay. Be as specific as you can. I mean, what
19 exactly scared you? Was it something that happened
20 right before you stood up?
- 21 A. Yeah, that's what Brian told me. Told me if I
22 didn't plead guilty right now of voluntary
23 manslaughter, I was going to get life in prison without
24 parole.
- 25 Q. Uh-huh (affirmative). Okay. And you're saying

1 that Mr. Johnson told you this right before you stood
2 up and told the judge that you wanted to plead?

3 A. Yes, ma'am.

4 Q. Okay. All right. And what were you scared of?
5 Did you think that Mr. Johnson wasn't prepared, or
6 what?

7 A. Well, I knowed he hadn't done any investigation
8 in my case at all like I asked him. And I was scared
9 that, you know, that he was not going to do nothing.

10 Q. Okay. When you say not do anything for you, what
11 does that mean?

12 A. Not try to help me.

13 Q. Okay. All right. And how did, how did you being
14 scared that Mr. Johnson wouldn't help you, how did that
15 force you into a plea?

16 A. Just what he told me; I was going to get life if
17 I didn't plead guilty. That scared me into pleading
18 guilty.

19 Q. Okay.

20 A. He never told me about the elements of the crime;
21 that all the elements have to be proven guilty.

22 Q. All right. What else do you have? What other
23 allegations?

24 A. That they took the warrant out before they even
25 done the autopsy.

- 1 Q. Uh-huh (affirmative).
- 2 A. And I think the autopsy was going off the warrant
3 what the investigator took out.
- 4 Q. Did you discuss that issue with Mr. Johnson?
- 5 A. No. I didn't know this till when I got the
6 autopsy the day of the trial until I got down in Lieber
7 looking over it.
- 8 Q. How do you know that the warrant was issued
9 before the autopsy?
- 10 A. The warrant was issued -- I've got it in here if
11 I can get it out. It was issued the 5th ---
- 12 Q. Okay.
- 13 A. --- of November of 2010, and the autopsy wasn't
14 done till November the 6th of 2010.
- 15 Q. Okay. How would that issue have -- what impact
16 would that issue have had on your trial?
- 17 A. Well, I think the investigator, he put on there
18 the cause of death blunt force trauma to the head. I
19 don't think he's a medical examiner. You know, how
20 does he know how the man died.
- 21 Q. Okay. All right. And the fact that Mr. Johnson
22 didn't pursue that issue, how did that prejudice your
23 case and how did it change ---
- 24 A. I think it would have had a different outcome of
25 it if he got an expert witness to go over the autopsy.

1 Q. Okay. All right. Anything else?

2 A. No.

3 Q. Okay. Please answer any questions that Ms.

4 Ratigan has.

5 **CROSS EXAMINATION**

6 **BY MS. RATIGAN:**

7 Q. So Mr. Johnson represented you for almost two

8 years; is that right?

9 A. Yeah, twenty-two months.

10 Q. All right. And did you have several meetings

11 with him about the case?

12 A. Yeah, several meetings.

13 Q. And you testified you reviewed some of the

14 evidence but not all of it?

15 A. Yes, ma'am.

16 Q. And did you tell Mr. Johnson what had happened

17 between you and the victim that day?

18 A. Yeah. I told him we got in a fight.

19 Q. Okay. And you had given a statement to the

20 police; is that correct?

21 A. Yes, ma'am.

22 Q. And did you review that statement with Mr.

23 Johnson?

24 A. Yes, ma'am.

25 Q. Did he tell you that that was probably going to

- 1 hurt your case?
- 2 A. He told me that I would probably get found guilty
3 because I had blood on my jacket.
- 4 Q. Okay.
- 5 A. I didn't know if that blood meant I was guilty or
6 innocent.
- 7 Q. Okay. And you testified you wanted Mr. Johnson
8 to do more of an investigation; is that correct?
- 9 A. Yes, ma'am.
- 10 Q. What did you want him to investigate that he did
11 not do for you?
- 12 A. He should have investigated the witness that came
13 forward that I told him about that he said didn't even
14 exist.
- 15 Q. Tomco?
- 16 A. Yeah, Jeffrey Tomco.
- 17 Q. Okay. What else did you want him ---
- 18 A. I wanted him to subpoena some witnesses to court
19 and he wouldn't even do it; Gladys Skinner, Michael and
20 Dillard Carver.
- 21 Q. And why did you want them at court?
- 22 A. Because they knowed I lived there behind Donnie
23 in a camper. They could testify to that. And I would
24 borrow Donnie's saw and go over there and help him
25 build him a dog house and all. Me and Donnie wasn't

1 into it or nothing. Me and Donnie was like friends.

2 Q. So you wanted these witnesses just to testify
3 about your relationship with the victim?

4 A. Yes, ma'am.

5 Q. All right. And you're saying today that you have
6 prior mental health treatment?

7 A. Yes, ma'am.

8 Q. Well, why, when the judge asked you if you had
9 any prior mental health treatment, did you say no?

10 A. I don't know.

11 Q. Okay. And I believe you testified you never told
12 Mr. Johnson about this prior treatment?

13 A. No, ma'am.

14 Q. Okay. And when you came up to court that day,
15 you knew that it was to go to trial?

16 A. Yeah.

17 Q. And your testimony is you decided to plead guilty
18 because Mr. Johnson scared you?

19 A. Yes, ma'am.

20 Q. Okay. And did he tell you if you pled guilty
21 that day the state would dismiss that burglary charge?

22 A. No, ma'am. He never told me that.

23 Q. Okay. Did he tell you if you pled guilty you
24 would be pleading guilty to the lesser sentence of --
25 the lesser charge of voluntary manslaughter?

1 A. He told me I would be pleading to a lesser
2 charge.
3 Q. Okay. And did you know when you went to trial
4 that day that the state would seek life without parole?
5 A. Yes, ma'am.
6 MS. RATIGAN: That's all I have, Your Honor.
7 THE COURT: Any redirect?
8 MS. HORLBECK: No, Your Honor. And we would
9 ask ---
10 THE COURT: Thank you, sir. You may step
11 down.
12 MS. HORLBECK: And that's all we have, Judge.
13 THE COURT: Do you have any witnesses?
14 MS. RATIGAN: Yes, Your Honor, the state
15 would call Mr. Johnson.
16 THE CLERK: Mr. Johnson, place your left hand
17 on the bible and raise your right hand.
18 You do solemnly swear or affirm that the testimony
19 you're about to give in this case will be the truth,
20 the whole truth and nothing but the truth, so help you
21 God?
22 THE WITNESS: I do.
23 THE CLERK: Thank you. Please state your
24 full name for the record.
25 THE WITNESS: Brian Patrick Johnson.

1 THE CLERK: Thank you.

2 BRIAN PATRICK JOHNSON,

3 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. RATIGAN:

6 Q. Mr. Johnson, do you recall represneting Mr.
7 Gosnell on this charge?

8 A. Yes, ma'am.

9 Q. And were you appointed to the Public Defender's
10 Office?

11 A. Yes, ma'am.

12 Q. Did you file the usual Rule 5 and Brady motions?

13 A. Yes. They all were filed.

14 Q. Did you receive those items from the state?

15 A. Yes, ma'am.

16 Q. Did you ever not receive something that you asked
17 for?

18 A. I believe that the file was complete.

19 Q. Did you review the evidence independently?

20 A. Yes, ma'am.

21 Q. Did you also review it with your client?

22 A. Yes, ma'am.

23 Q. Did you see any issues with Rule 6 or chain of
24 custody?

25 A. I did not.

- 1 Q. Was his statement -- was your client's statement
2 to police part of that discovery package?
- 3 A. Yes, ma'am.
- 4 Q. Did you review it with him?
- 5 A. Yes, ma'am.
- 6 Q. Did you review with him the impact that had on
7 your defense case?
- 8 A. I did.
- 9 Q. Did he tell you his version of what happened with
10 the victim?
- 11 A. Yes, ma'am.
- 12 Q. And did he tell you he had acted in self-defense?
- 13 A. He did say that to me.
- 14 Q. Did you review with him the autopsy findings?
- 15 A. I did.
- 16 Q. And what were those findings? Do you recall?
- 17 A. Well, the autopsy found two things, as I recall.
18 One was the cause of death was blunt force trauma with
19 the secondary cause of the -- not a secondary cause,
20 but a secondary factor was the heart disease that the
21 victim suffered from.
- 22 Q. And did you discuss these -- the kind of primary
23 and secondary factors with your client?
- 24 A. Yes, ma'am.
- 25 Q. In your opinion did that secondary factor of

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1 heart disease remove this case from being a murder or a
2 manslaughter case?

3 A. I did not, but I was certainly prepared to argue
4 that. Not only to cross examine Dr. Ward about it but
5 also to argue it in closing.

6 Q. Did you discuss with Mr. Gosnell the elements of
7 murder?

8 A. I did. I actually -- murder and manslaughter and
9 even involuntary and self-defense, I actually went over
10 all those in detail. I actually had to print them out
11 because I can't simply recall them offhand. So I went
12 down there with them and discussed those with him.

13 Q. Okay. And did you review with Mr. Gosnell the
14 sentence ranges for both murder and manslaughter?

15 A. Yes, ma'am. In addition the issue became when
16 they served him with life without the possibility of
17 parole notice, I then informed him that it could be
18 murder or manslaughter and he would still get life.

19 Q. And did you explain to him that that LWOP notice
20 made it a mandatory sentence if he was convicted?

21 A. Yes, ma'am.

22 Q. Okay. When would you have told him that? Would
23 it be prior to the trial date or the date of the trial?

24 A. I believe that when I received the notice I
25 mailed it to him or at the very least visited him and

1 went over that with him, because that would have been
2 very important. So it would have been long before the
3 date of trial.

4 Q. And the transcript reflects the case was called
5 for trial, there were several motions made and then
6 your client decided to plead guilty. Do you recall
7 what kind of tipped the balance? What made him decide
8 he wanted to plead instead of going to trial?

9 A. I believe the admittance of his statement. The
10 state did a *Jackson v. Denno* which we contested the
11 admissibility. The judge ruled it in and I believe
12 that was the difference.

13 Q. Okay. Upon reviewing the autopsy, did you ever
14 contemplate getting an independent expert?

15 A. It's something that I thought about, but
16 considering the other evidence, the witnesses and the
17 fact of what -- there were several factors. I know Mr.
18 Gosnell testified that he and Mr. Page were friends,
19 but there was evidence to the contrary. Furthermore,
20 there were eyewitnesses to the incident. There were a
21 number of issues that made me believe that that
22 situation was best argued at trial with regards to the
23 secondary factor.

24 Q. Do you recall Mr. Gosnell giving you the names of
25 any witnesses to contact?

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1 A. Actually I do. And any names that I was given, I
2 gave to my investigator, Robin Austin, or it could have
3 been Eden Cam at the time. Anyhow, as I recall, she
4 tried to find Mr. Tomco and could not locate him. Any
5 witnesses that he gave were indeed passed over to my
6 investigator for investigation.

7 Q. And did that investigation yield anything that
8 you could have used at trial?

9 A. I don't believe so. There was one -- there were
10 issues with regards to the camper, because he was also
11 charged with burglary. But at the time of trial,
12 burglary wasn't an issue. And furthermore, he lived in
13 the camper prior and so any permission that he had to
14 go on the property had since been revoked. So I didn't
15 feel that that was necessary to subpoena those
16 witnesses at trial for a murder.

17 Q. And this case was being called for murder and not
18 for burglary? Or was it for both?

19 A. Well, there was a prior burglary charge that he
20 actually -- that would have been a great defense to,
21 because I represented him on that and he got out of
22 jail and then picked up the murder charge.

23 Q. Okay. And there's some testimony both from Mr.
24 Gosnell and then also at the beginning of the trial
25 that he had had his discovery package stolen or that it

- 1 had been taken from him. Did he ever ask you to give
2 him a new packet of information? Do you recall?
- 3 A. He did ask for a new packet. But considering --
4 he told me that it was stolen. And so I simply would
5 go down there and speak to him in length with it
6 because I didn't want another discovery packet to be
7 stolen. In the past I've had familiarity with other
8 inmates deciding that they know something about a case
9 and testifying against a defendant just because it may
10 help them in their case.
- 11 Q. If Mr. Gosnell stated he wanted to discuss a
12 certain piece of evidence, so you would just go down
13 and talk about that with him?
- 14 A. Yes, ma'am.
- 15 Q. Okay. Did Mr. Gosnell ever ask you to file an
16 appeal in this case?
- 17 A. I did get a letter from him after the period of
18 time within which was available for appeal.
19 Furthermore, if I had gotten it in time, I did not
20 think there was an issue appealable from the guilty
21 plea, as I saw it.
- 22 MS. RATIGAN: That's all I have, Your Honor.
- 23 THE COURT: You may cross examine the
24 witness.
- 25 MS. HORLBECK: Yes, Your Honor.

1 **CROSS EXAMINATION**

2 **BY MS. HORLBECK:**

3 Q. Mr. Johnson, what was your plan -- how were you
4 going to use the secondary contributing factor of
5 coronary vascular disease in your defense?

6 A. Well, Greg had said when he left the home that
7 the man was still alive. Okay. So that's different
8 from beating a man and him laying there dead.

9 Q. Okay.

10 A. He also told me about how he had attacked him and
11 when he came at him he had his shirt off and then
12 apparently later put his shirt on.

13 Q. Okay.

14 A. So I intended to argue those facts in an effort
15 to primarily confuse the issues and to take away from
16 the issue that he did beat him with a flashlight.

17 Q. Okay. And in reviewing Dr. Ward's autopsy
18 report, it was clear to him that he didn't feel like --
19 he felt like the major cause of death was blunt force
20 trauma?

21 A. Yes, ma'am.

22 Q. Okay. All right. At that point do you think
23 hiring or consulting with another expert would have
24 been useful in at least seeing if you could have your
25 own, for lack of a better term, your own expert to

- 1 testify to kind of shore up your version of events;
2 that the death really happened as a result of the heart
3 disease?
4 A. Well, that wasn't going to be my primary defense.
5 Q. Okay.
6 A. Furthermore, I think what would have happened is
7 that the -- any issues with the heart disease was
8 brought upon by the beating he took. And so I felt
9 that that would have proved fruitless.
10 Q. Okay. Had you talked to Dr. Ward about that?
11 A. I believe Evelyn Mitchell did.
12 Q. Okay.
13 A. Evelyn Mitchell was my co-counsel and she was
14 going to handle that portion.
15 Q. And was Dr. -- was it your impression that Dr.
16 Ward -- that would have been Dr. Ward's testimony, that
17 the heart was exacerbated by the beating?
18 A. I believe that's correct.
19 Q. All right. And were you able to even informally
20 talk with another doctor about whether or not that was
21 true? Whether the heart was caused by the beating?
22 A. I did not talk to another doctor, no.
23 Q. Okay. All right. Just looking back, and I know
24 it's real easy to say looking back, but do you think
25 that would have been helpful to your defense?

Gregory Gosnell -vs- State of South Carolina (2013-CP-23-00057)
Brian Patrick Johnson - Cross Examination by Ms. Horlbeck

40

1 A. I do not. Because everything seemed to support
2 the pictures regarding the autopsy. Before he washed
3 the blood off, he looked pretty bad.

4 Q. Okay. All right. That's all I have. Thank you.

5 THE COURT: Redirect?

6 MS. RATIGAN: I have no redirect. And the
7 state would rest, Your Honor.

8 THE COURT: All right. Thank you, Mr.
9 Johnson. You may step down

10 MS. HORLBECK: And Judge, I have no reply.

11 THE COURT: All right. I'll review this
12 transcript and take it under advisement. I'll issue an
13 order within the next couple of weeks.

14 MS. HORLBECK: Thank you, Your Honor.

15

16 [END OF REQUESTED TRANSCRIPT OF RECORD]

1

CERTIFICATE OF REPORTER

2

I, the undersigned Danette P. Hanks, Official
Court Reporter for the Thirteenth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete transcript
of record of all the proceedings had and evidence
introduced in the trial/hearing of the captioned case,
relative to appeal, in the Court of Common Pleas for
Greenville County, South Carolina, on the 21st day of
February, 2014.

11

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

13

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

15

August 9, 2014

16

17

18

19

A handwritten signature in cursive script, reading "Susan Danette Hanks", written in dark ink over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-0057
COUNTY OF GREENVILLE	)	
	)	
Gregory Gosnell,	)	
S.C.D.C. No. 135877,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED-CLERK OF COURT
GREENVILLE CO. SC
PAUL B. WICKENHOFER
2014 APR -9 P 3:00

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 4, 2013. The Respondent made its return on May 7, 2013. An evidentiary hearing into the matter was convened on February 21, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.¹

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Brian P. Johnson, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted

¹ At the start of the hearing, counsel for the Applicant made a motion for funding in order to (1) perform DNA testing of several swabs from the victim's home and (2) obtain an autopsy expert. This Court denied the motion.

[Handwritten signature]

at the November 2011 term of the Greenville County Grand Jury for murder (2011-CP-23-8334).

He was represented by Brian P. Johnson, Esquire.

On September 10, 2012, the Applicant pled guilty to voluntary manslaughter. The Honorable Larry B. Hyman, Jr. sentenced the Applicant to seventeen and a half years imprisonment. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Applicant is a mental health patient."
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he

² EWH 2

must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he had several meetings with plea counsel and that they reviewed his version of events, some of the State's evidence, and the statement he had given to police. The Applicant stated plea counsel never reviewed the elements of the offense. The Applicant stated plea counsel failed to file motions pursuant to Brady and Rule 6 and that he had a Brady issue because a toxicology report was not provided. The Applicant stated plea counsel failed to provide him a copy of his discovery materials. The Applicant stated plea counsel should have obtained an expert witness regarding the autopsy because heart disease was a contributing factor to the victim's death. The Applicant stated he gave plea counsel the name of a witness (Jeffrey

3 *[Handwritten signature]*

Tomko) but that counsel stated he could not find this person. The Applicant stated he had prior psychiatric treatment but admitted he did not tell plea counsel. The Applicant stated he asked plea counsel to file an appeal. The Applicant stated he pled guilty because plea counsel scared him. The Applicant stated plea counsel said he would receive a life sentence if he pled guilty. The Applicant admitted he ^{KNOW} ~~know~~ the State had served a notice of intent to seek life imprisonment without parole.

Plea counsel testified he filed Brady and Rule 5 motions and received a complete file from the State. Plea counsel testified that, after the Applicant's discovery materials were stolen at the jail, he decided not to give him a second copy. Plea counsel testified he reviewed the State's evidence both independently and with the Applicant. Plea counsel testified they reviewed the elements of murder, voluntary manslaughter, involuntary manslaughter, and self-defense and the sentence ranges for the offenses. Plea counsel testified they reviewed the Applicant's statement, its impact upon the defense case, and the Applicant's version of events. Plea counsel testified the autopsy concluded the cause of death was blunt force trauma with a secondary factor of heart disease. Plea counsel testified he decided not to obtain an independent expert after considering the evidence, witnesses, and the fact that the heart issue may have been brought about by the beating. Plea counsel testified he gave the names of any witnesses he received to his investigator and that the investigator could not find Tomko. Plea counsel testified he did not receive a timely request for an appeal but stated there were no appealable issues from the guilty plea hearing. Plea counsel confirmed the notice of life imprisonment without parole (LWOP) had been served and that he explained to the Applicant that he would have received an LWOP sentence if he was convicted of murder or voluntary manslaughter at trial. Plea counsel testified the Applicant pled guilty because the trial judge found his statement was voluntary.

4 *EW4*

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, reviewed the facts and elements and possible sentence ranges for the offense, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant has failed to meet his burden of proving he pled guilty because he believed plea counsel had not adequately investigated the case and told him that he would be convicted. The record indicates a Jackson v. Denno hearing was held and the trial judge ruled the Applicant's statement was admissible. (Transcript, p.76). The Applicant indicated he wished to plead guilty and plea counsel asked for a moment to speak with him. (Transcript, p.78). The State agreed to dismiss the first-degree burglary charge, reduce the murder charge to voluntary manslaughter, and withdraw the LWOP notice if the Applicant pled guilty. (Transcript, p.78-80; p.83). The Applicant admitted to the plea judge that he was guilty. (Transcript, p.91). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Transcript, pp.84-86; p.91). The Applicant told the plea judge his answers were truthful. (Transcript, p.92). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). Ultimately, the Applicant failed to demonstrate that he would have insisted upon going to trial, especially in light of the trial judge's ruling following the Denno hearing and the State's offer not to pursue and LWOP sentence. This Court finds the Applicant entered a knowing and

⁵ AW#5

voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly handle matters related to discovery. The Applicant argued plea counsel failed to: (1) file proper Brady motions and (2) provide him a second copy of his discovery materials. Plea counsel testified he filed all appropriate discovery motions and received full discovery in this case. Plea counsel also testified he declined to give the Applicant a second copy of his discovery materials because he had previous cases where inmates had stolen discovery materials in hopes they could testify against fellow inmates and help their own case. This Court finds plea counsel is credible and articulated a valid reason for not providing a second set of discovery materials.

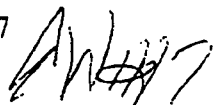
This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly investigate potential witnesses. The Applicant testified he asked plea counsel to locate Jeffrey Tomko. The Applicant testified plea counsel should have obtained an expert witness regarding the findings of the autopsy. Plea counsel testified his investigator was unable to locate Tomko. Plea counsel testified he did not believe an expert witness would have been able to refute evidence of the victim's cause of death, but that he as adequately prepared to argue this at trial. This Court finds plea counsel's testimony is credible. This Court cannot speculate as to Tomko's potential trial testimony, as he did not testify at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). Similarly, this Court finds the Applicant failed to demonstrate that he suffered any prejudice from the lack of an expert witness. See Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008)



(finding that, as the applicant failed to present any expert testimony at the PCR hearing, "it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense"); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

This Court finds the Applicant failed to meet his burden of proving he is entitled to an appeal. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. This Court finds the Applicant made a clear, informed choice to plead guilty. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712. The Applicant did not indicate at any point that he was doing so based on coercion of counsel. Based on the thorough and complete guilty plea colloquy, it is unlikely a rational defendant would have wanted to appeal. See Roe v. Flores-Ortega, 528 U.S. at 480, 120 S. Ct. at 1036. Further, this Court does not find credible the Applicant's assertion that he made a timely request for counsel to file an appeal.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant.

7 

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

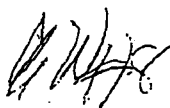
All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

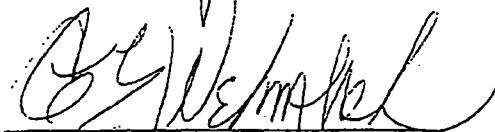
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.



IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3 day of April, 2014.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Greenville South Carolina.

WITNESSES

C.T. Miller

CM

Greenville County Sheriff's Office

11/9/2010

DOCKET NO. 2011-GS-23-

^{BSD}

008334

✓ The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2011

THE STATE

vs.

GREGORY EARL GOSNELL

ARREST WARRANT NUMBER

1483985

ACTION OF GRAND JURY

TRUE BILL

Gregory Earl Gosnell

Foreperson of Grand Jury

VERDICT

0217

0416

Indictment for

MURDER

VIOLATION § 16-03-0010

Foreperson of Petit Jury

Date:

RECEIVED

NOV 01 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on **NOV 22 2011** the Grand Jurors of Greenville
County present upon their oath:

That GREGORY EARL GOSNELL did in Greenville County, on or about the 5th day of November, 2010,
unlawfully and with malice aforethought kill DONALD THOMAS PAGE by means of striking him with a blunt
object, and that DONALD THOMAS PAGE died as a proximate result thereof. This is in violation of §16-3-10
of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Gregory Earl Gosnell

AKA:

Race: WHITE Sex: M Age: 47DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED]SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Voluntary Manslaughterin violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code #☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☐ Recommendation by the State.

ARREST:

Supra S. Seay
Seay, Bryna65398
SC Bar#Any [Signature]
Defendant112
Attorney for Defendant77946
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 17.5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2308334A/W#: 1483985Date of Offense: 11/5/2010S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.